

# **DIRECT TAXES CODE BILL, 2009**



# DIRECT TAXES CODE, 2009

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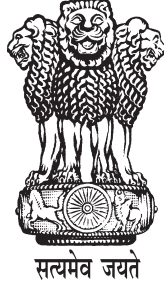
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# **DIRECT TAXES CODE BILL, 2009**

A

Bill

to consolidate and amend the law relating to direct taxes.

BE it enacted by Parliament in the Sixty First Year of the Republic of India as follows:-

## **CHAPTER - I PRELIMINARY**

### **Short title, extent and commencement**

1. (1) This Code may be called the Direct Taxes Code, 2009.  
(2) It extends to the whole of India.  
(3) Save as otherwise provided in this Code, it shall come into force on the **1st day of April, 2011.**

**PART - A  
INCOME-TAX**

**CHAPTER - II  
BASIS OF CHARGE**

**Liability to pay income-tax**

2. (1) Subject to the provisions of this Code, every person shall be liable to pay income-tax in respect of his total income for the financial year.
- (2) The liability to pay income-tax, referred to in sub-section (1), shall be the amount of income tax calculated at the rate specified in the First Schedule and in the manner provided therein.
- (3) However, if a person is a company, the liability to pay income-tax referred to in sub-section (1) shall be the higher of the following amounts:-
  - (a) the amount of the liability calculated under sub-section (2); and
  - (b) the amount calculated at the rate specified in Paragraph A of the Second Schedule and in the manner provided therein.
- (4) The liability to pay income-tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code.
- (5) Without prejudice to the foregoing and subject to the provisions of this Code, every person may be charged in respect of his liability to pay income-tax referred to in sub-section (1).
- (6) The income-tax charged under the foregoing provisions shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.
- (7) The liability to pay income-tax, or the chargeability thereof, under the foregoing provisions, for any financial year, shall be determined in accordance with the provisions of this Code as they stand on the 1st day of April immediately succeeding the last day of the financial year.

**Scope of total income**

3. (1) Subject to the provisions of this Code, the total income for any financial year of a person, who is a resident, shall include all income from whatever source derived which-
  - (a) accrues, or is deemed to accrue, to him in India in the year;
  - (b) accrues to him outside India in the year;
  - (c) is received, or is deemed to be received, by him, or on his behalf, in India in the year; or
  - (d) is received by him, or on his behalf, outside India in the year.
- (2) Subject to the provisions of this Code, the total income for any financial year of a person, who is a non-resident, includes all income from whatever source derived which-
  - (a) accrues, or is deemed to accrue, to him in India in the year; or
  - (b) is received, or is deemed to be received, by him, or on his behalf, in India in the year.
- (3) Any income which accrues to a resident outside India in the year, or is received outside India in the year by, or on behalf of, such resident, shall be included in the total income of the resident, regardless of -
  - (a) the income having been charged to tax outside India; or

- (b) the method for granting of relief for the avoidance of double taxation under any agreement referred to in section 258.

### **Residence in India**

4. (1) An individual shall be resident in India in any financial year, if he is in India-
- (a) for a period, or periods, amounting in all to one hundred and eighty-two days, or more, in that year; or
  - (b) for a period, or periods, amounting in all to -
    - (i) sixty days, or more, in that year, and
    - (ii) three hundred and sixty-five days, or more, within the four years immediately preceding that year.
- (2) The provisions of clause (b) of sub-section (1) shall not apply in respect of an individual who is-
- (a) a citizen of India, or a person of Indian origin, living outside India and who visits India in that year;
  - (b) a citizen of India and who leaves India in that year as a member of the crew of an Indian ship; or
  - (c) a citizen of India and who leaves India in that year for the purposes of employment outside India.
- (3) A company shall be resident in India in any financial year, if-
- (a) it is an Indian company; or
  - (b) its place of control and management, at any time in the year, is situated wholly, or partly, in India.
- (4) However, every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at any time in the year, is situated wholly, or partly, in India.

### **Income deemed to accrue in India**

5. (1) The income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from:-
- (a) a business connection in India;
  - (b) a property in India;
  - (c) an asset or source of income in India; or
  - (d) the transfer, directly or indirectly, of a capital asset situate in India.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the following income shall be deemed to accrue in India: -
- (a) income from employment, if it is for-
    - (i) service rendered in India;
    - (ii) service rendered outside India by a citizen of India and the income is receivable from the Government; or
    - (iii) the rest period, or leave period, which precedes, or succeeds, the period of service rendered in India and forms part of the service contract of employment;
  - (b) dividend received outside India from an Indian company;
  - (c) interest accrued from the Government or any resident;
  - (d) interest accrued from any non-resident, if the interest is in respect of any debt incurred and the debt is used for the purposes of-
    - (i) a business carried on by the non-resident in India; or
    - (ii) earning any income from any source in India;
  - (e) royalty accrued from the Government or any resident;

- (f) royalty accrued from a non-resident, if the royalty is for the purposes of -
    - (i) a business carried on by the non-resident in India; or
    - (ii) earning any income from any source in India;
  - (g) fees for technical services accrued from the Government or any resident;
  - (h) fees for technical services accrued from any non-resident, in respect of services utilised for the purposes of,-
    - (i) a business carried on by the non-resident in India; or
    - (ii) earning any income from any source in India;
  - (i) transportation charges accrued from the Government or any resident;
  - (j) transportation charges accrued from any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India.
- (3) For the purposes of clause (a) of sub-section (1), in the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue in India shall be only such part of the income as is reasonably attributable to those operations carried out in India.
- (4) The income deemed to accrue in India under sub-section (1) shall, in the case of a non-resident, not include the following :-
- (a) any income accruing through, or from, operations which are confined to the purchase of goods in India for the purposes of export out of India;
  - (b) interest accrued from a resident, in respect of any debt incurred and used for the purposes of,-
    - (i) a business carried on by the resident outside India; or
    - (ii) earning any income from any source outside India;
  - (c) royalty accrued from a resident for the purposes of,-
    - (i) a business carried on by the resident outside India; or
    - (ii) earning any income from any source outside India;
  - (d) royalty consisting of lump sum consideration accrued from a resident for the transfer of any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer, along with a computer or computer-based equipment, under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.
  - (e) fees for technical services, accrued from a resident, in respect of services utilised for the purposes of,-
    - (i) a business carried on by the resident outside India; or
    - (ii) earning any income from any source outside India;
  - (f) transportation charges for the carriage by aircraft or ship, accrued from any resident, if the transportation charges are in respect of the carriage from a place outside India to another place outside India.
- (5) The provisions of sub-section (2) shall be applicable regardless of the fact that,-
- (a) the payment is made outside India;
  - (b) the services are rendered outside India; or
  - (c) the income has otherwise not accrued in India.

### **Income deemed to be received in the financial year**

6. The following income shall be deemed to be received in the financial year:-
- (a) any contribution made by the employer, in the financial year, to the account of an employee with any permitted savings intermediary referred to in sub-section (2) of section 66.
  - (b) any contribution made by the employer to any fund, other than an approved fund, or the interest thereon.

**Total income to include income of any other person**

7. (1) The total income of any person shall include the following income of any other person:-
- (a) any income transferred, whether revocable or not, to any other person without transferring the asset from which the income accrues;
  - (b) any income accruing from an asset transferred to any trust, if the transfer is revocable during the life time of the beneficiary of the trust; and
  - (c) any income accruing from an asset transferred to any other person, not being a trust, if the transfer is revocable during the lifetime of such other person.
- (2) For the purpose of this section,-
- (a) a transfer shall be deemed to be revocable if -
    - (i) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or assets to the transferor; or
    - (ii) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or assets;
  - (b) a transfer shall include any settlement, trust, covenant, agreement or arrangement.

**Total income to include income of spouse, minor child, etc.**

8. (1) The total income of any individual shall include,-
- (a) all income which accrues, directly or indirectly,-
    - (i) to the spouse, by way of salary, commission, fees or any other form of remuneration, from a concern in which the individual has a substantial interest other than any income solely attributable to the application of the technical or professional knowledge and experience of the spouse;
    - (ii) from assets transferred, directly or indirectly, to the spouse by the individual, otherwise than for adequate consideration, or in connection with an agreement to live apart;and
    - (iii) from assets transferred, directly or indirectly, to any other person by the individual otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of the spouse;
  - (b) all income which accrues to a minor child (other than a minor child being a person with disability or person with severe disability) of the individual, other than income which accrues to the child on account of any-
    - (i) manual work done by the child; or
    - (ii) activity involving application of the skill, talent or specialised knowledge and experience of the child;
  - (c) all income derived from any converted property or part thereof;
  - (d) all income derived from any converted property which is received by the spouse or minor child upon partition of the Hindu undivided family of which the individual is a member.
- (2) The income referred to in sub-clause (i) of clause (a) of sub-section (1) shall, regardless of anything contained therein, be included in the total income of the spouse whose total income (excluding the income referred to in that sub-clause) is higher.
- (3) The Board may precribe the method for determining the income referred to in sub-clause (ii) of clause (a) of sub-section (1).
- (4) The income referred to in clause (b) of sub-section (1) shall be included in the total income of-

- (a) the parent who is the guardian of the minor child, if the other parent is not a guardian; or
- (b) the parent whose total income (excluding the income referred to in that clause) is higher, if both the parents are guardians of the child;

### **Income not included in the total income**

9. The total income for a financial year of any person shall not include any of the income enumerated in the Sixth Schedule.

### **Persons not liable to income-tax**

10. The persons specified in the Seventh Schedule shall not be liable to income-tax under section 3 of this Code.

## **CHAPTER - III COMPUTATION OF TOTAL INCOME A. - General**

### **Interpretation**

- 11 For the purposes of this Chapter, unless otherwise stated, reference to any accrual, receipt, expenditure, withdrawal, asset or liability shall be presumed to be always in relation to -
- (a) the financial year in respect of which the income is computed; and
  - (b) the person in respect of whom the income is computed.

### **Classification of sources of income**

- 12 For the purposes of computation of total income of any person for any financial year, income from all sources shall be classified under the following :
- A. Income from special sources
  - B. Income from ordinary sources

### **Computation of income from special sources**

- 13 (1) Every item listed in the Table in rule 3 of the First Schedule shall be a special source.
- (2) The income accruing from any special source shall be computed under the class 'income from special sources' in accordance with the provisions of the Ninth Schedule.

### **Computation of income from ordinary sources**

14. (1) The income accruing from a source, other than the special sources, shall be computed under the class 'income from ordinary sources'.
- (2) For the purposes of computation under sub-section (1), all income accruing from a source, other than the special sources, shall be classified under the following heads of income:-
- A. Income from employment.
  - B. Income from house property.
  - C. Income from business.
  - D. Capital gains.
  - E. Income from residuary sources.

### **Apportionment of income between spouses governed by Portuguese Civil Code**

15. (1) The income of the husband and wife, governed by the communião dos bens, under each special source shall be apportioned equally between the spouses.



- (2) The income of the husband and wife, governed by the communiao dos bens, under each head of income (other than that under the head 'Income from employment') shall be apportioned equally between the spouses.
- (3) The income so apportioned under sub-sections (1) and (2) shall be included separately in the total income of the spouses, respectively.
- (4) The income under the head "Income from employment" shall be included in the total income of the spouse who has actually earned it.

#### **Avoidance of double taxation**

16. (1) Any income which is included in the total income for any financial year shall not be included in the total income for any succeeding financial years.
- (2) Any income which is includible in the total income of any person shall not be included in the total income of any other person, unless otherwise provided.

#### **Expenditure not to be allowed as deduction**

17. (1) In computing the total income for any financial year, the following shall not be allowed as a deduction, namely:-
  - (a) any expenditure attributable to income which does not form part of the total income under this Code and determined in accordance with the method as may be prescribed;
  - (b) any amount which has been allowed as a deduction in any preceeding financial year;
  - (c) any expenditure incurred for any purpose which is an offence or which is prohibited by law;
  - (d) any provision made by the person for any liability if the liability remains unascertained by the end of the financial year; and
  - (e) any expenditure referred to in clause (o) of sub-section (2) of section 56.
- (2) Any amount allowed as a deduction under any provision of this Code shall not be allowed as a deduction under any other provision of this Code.
- (3) The provisions of this section shall apply regardless of anything to the contrary contained in any other provisions of this Chapter.

#### **Amount not deductible where tax is not deducted at source**

18. (1) Any amount on which tax is deductible at source under Chapter XI during the financial year shall not be allowed as a deduction in computing the total income if,-
  - (a) the tax has not been deducted during the financial year; or
  - (b) the tax, after such deduction, has not been paid during the financial year, or in the subsequent year, before the expiry of the time prescribed under sub-section (1) of section 198.
- (2) However, the provision of sub-section (1) shall not apply, if the tax has been deducted during the last quarter of the financial year and the tax is paid before the due date of filing the return of tax bases.
- (3) An assessee shall be allowed a deduction in respect of the amount referred to in sub-section (1) in any other succeeding financial year if,-
  - (a) the amount of tax deductible at source is actually paid in the other financial year; and
  - (b) such other financial year is not later than two financial years immediately succeeding the financial year in which tax was deductible at source under Chapter XI.

## **B. - Income from Employment**

### **Income from Employment**

19. The income derived by a person from any employment shall be computed under the head “Income from employment”.

### **Computation of income from Employment**

20. The income computed under the head “Income from employment” shall be the gross salary as reduced by the aggregate amount of the deductions referred to in section 22.

### **Scope of gross salary**

21. The gross salary shall be the amount of salary due or paid (including arrears or advance) to a person, by or on behalf of his employer or former employer, in the financial year.

### **Deductions from gross salary**

22. (1) The deductions for the purposes of section 20 shall be the following: -
- (a) any sum paid on account of a tax on employment within the meaning of clause (2) of Article 276 of the Constitution;
  - (b) the amount received from his employer for journey by the person between his residence and office or any other place of work, to the extent prescribed;
  - (c) any such special allowance or benefit specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;
  - (d) the amount due or received, directly or indirectly, from his employer, in connection with his voluntary retirement or termination of service or voluntary separation under any scheme framed for this purpose in accordance with such guidelines as may be prescribed;
  - (e) the amount of any gratuity received from one or more of his employers, subject to limits as may be prescribed, if the amount is received -
    - (i) on his retirement, or on his becoming incapacitated prior to such retirement, or on termination of his employment; or
    - (ii) by the spouse, children or dependants on the death of the person.
  - (f) the amount of any death-cum-retirement gratuity received under the Payment of Gratuity Act, 1972 or from the Central Government, State Government, local authority or any public sector company;
  - (g) the amount received in commutation of pension under a scheme of his employer, framed in accordance with the prescribed rules, to the extent of -
    - (i) one-third of the pension, in a case where he receives any gratuity; and
    - (ii) one-half of such pension, in any other case; and
  - (h) the amount of any pension received by an individual who has been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf.
- (2) The deduction under clauses (d) to (g) of sub-section (1) shall be allowed if the amounts referred to therein is paid to, or deposited in, a Retirement Benefits Account maintained with any permitted savings intermediary in accordance with the scheme framed and prescribed by the Central Government in this behalf.

## C. - Income from house property

### Income from House Property

23. (1) The income from any house property owned by the person shall be computed under the head “Income from house property”.
- (2) The income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business.
- (3) The income from any house property owned by two or more persons having definite and ascertainable shares shall be computed separately for each such person in respect of his share.
- (4) The provisions of this section shall not apply,-
- (a) to any portion of the property which the person occupies for the purposes of his business, the income from which is computed under the head “Income from business”;
  - (b) to any property which is not ready for use during the financial year.

### Computation of income from house property

24. The income from a property shall be the gross rent as reduced by the aggregate amount of the deductions referred to in section 26.

### Scope of gross rent

25. (1) The gross rent in respect of a property shall be the higher of the amount of contractual rent and presumptive rent, for the financial year.
- (2) The contractual rent referred to in sub-section (1) shall be the rent receivable by the assessee under a contract, whether in writing or otherwise.
- (3) The presumptive rent referred to in sub-section (1) shall be six per cent. of -
- (a) the ratable value fixed by any local authority in respect of the property; or
  - (b) the cost of construction or acquisition of the property if no such value has been fixed by the local authority.
- (4) The gross rent shall, regardless of anything to the contrary contained in sub-section (1), be taken to be nil if the property consists of a house or part of a house which is not let out.
- (5) The provisions of sub-section (4) shall not apply if-
- (a) the house or part of the house is actually let during any part of the financial year; or
  - (b) any other benefit is derived from it by the owner.
- (6) The provisions of sub-section (4) shall, in a case where a person owns more than one house, apply only in respect of one house, which the person may specify at his option.

### Deductions from gross rent

26. (1) The aggregate amount of deductions for the purposes of section 24 shall be the following:-
- (a) the amount of taxes levied by a local authority in respect of the property if the amount is actually paid during the financial year;
  - (b) the amount of tax on services paid to the Central Government in respect of rent, if the amount is actually paid during the financial year;
  - (c) a sum equal to twenty per cent. of the gross rent determined under section 25, towards repair and maintenance of the property;

- (d) the amount of any interest,-
  - (i) on capital borrowed for the purposes of acquiring, constructing, repairing, renewing or reconstructing the property, or
  - (ii) on capital borrowed for the purpose of repayment of the capital referred to in sub-clause (i).
- (2) The aggregate amount of deduction referred to in sub-section (1) shall be nil in respect of the property referred to in sub-section (4) of section 25.

### **Special provision for advance rent received**

27. The amount of rent received in advance shall be included in the gross rent in the financial year to which the rent relates.

## **D. - Income from business**

### **Income from business**

28. (1) The income from any business carried on by the assessee at any time during the financial year shall be computed under the head "Income from business".
- (2) For the purpose of computing the income under the head "Income from business", the income of each business shall be computed separately.
- (3) Any income from a business after its discontinuance shall be deemed to be the income from the business of the recipient in the year of receipt and shall, accordingly, be computed under the head "Income from business".

### **Distinct and separate business**

29. (1) A business shall be distinct and separate from another business if there is no interlacing, inter-dependence or unity embarrassing the two businesses.
- (2) A business shall be deemed to be distinct and separate from another business, if-
- (a) the unit of the business is processing, producing or manufacturing the same goods as in the other business and such unit is located physically apart from other unit;
  - (b) the unit of the business is producing, processing or manufacturing the same goods as in the other business and utilizes raw material or manufacturing process, which is different from the raw material or the manufacturing process of the other unit;
  - (c) separate books of account are maintained or capable of being maintained, for such business; or
  - (d) it is a business in respect of which profits are determined under sub-section (2) of section 30.
- (3) Speculative transactions carried on in the nature of a business ('speculative business') shall be deemed to be distinct and separate from any other business.

### **Computation of income from business**

30. (1) The income computed under the head "Income from business" shall be the profits of the business.
- (2) The profits of the business specified in column (2) of Table 1 shall be computed in accordance with the rules contained in the schedule specified in the corresponding entry in column (3) of the said Table.

**TABLE-1**

<b>Sr.No.</b> <b>(1)</b>	<b>Nature of Business</b> <b>(2)</b>	<b>Schedule</b> <b>(3)</b>
01.	Business of operating a qualifying ship	Tenth Schedule
02.	Business of mineral oil or natural gas	Eleventh Schedule
03.	Business of developing a special economic zone	Twelveth Schedule
04.	Business specified in Rule 1 of the Thirteenth Schedule	Thirteenth Schedule
05.	Business listed in column (2) of the Table in the Fourteenth Schedule whose income is determined on presumptive basis	Fourteenth Schedule

- (3) The profits of any other business shall be the gross earnings from the business as reduced by the amount of business expenditure incurred by the assessee.

### Gross earnings

- 31.** (1) The gross earnings referred to in section 30 shall be the aggregate of the following:-
- (i) the amount of any accrual or receipt from, or in connection with, the business;
  - (ii) the value of any benefit or perquisite, accrued or received from, or in connection with, the business; and
  - (iii) the value of the inventory of the business, as on the close of the financial year.
- (2) The accruals or receipts referred to in sub-section (1) shall, without prejudice to the generality of the provisions of that sub-section, include the following :-
- (i) the amount of any compensation or other payment, accrued or received, for-
    - (a) termination or modification of a business agreement or agency; or
    - (b) vesting of the management of any property or business
  - (ii) any consideration, accrued or received under an agreement for non-compete;
  - (iii) the value of any benefit or perquisite accrued to, or received by, a person, being a trade, professional or similar association, in respect of specific services performed for its members;
  - (iv) the amount of profits on sale of any licence obtained in connection with the business;
  - (v) the amount of profits on transfer of any right or benefit (by whatever name called) accrued or received under any scheme formulated by the Government, local authority or a corporation established under any law;
  - (vi) the amount of cash assistance, subsidy or grant, by whatever name called, received from any person for, or in connection with, the business other than to meet any portion of the cost of any business capital asset;
  - (vii) the amount of any remission, drawback or refund of any tax, duty or cess, received from the Government;
  - (viii) the amount of interest or remuneration (including salary, bonus and commission) accrued to, or received by, a participant of an unincorporated body;
  - (ix) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy;
  - (x) the amount of profit on transfer of any business capital asset computed in accordance with the provisions of section 40;

- (xi) any consideration accrued or received on account of slump sale;
- (xii) the amount of any benefit accrued to, or received by, the person or the successor in business, if -
  - (a) it is by way of remission or cessation of any trading liability or statutory liability or it is in respect of any loss or expenditure; and
  - (b) the trading liability or statutory liability or loss or expenditure has been allowed as deduction in any financial year;
- (xiii) the amount of reduction, remission or cessation of any liability by way of loan, deposit, advance or trade credit;
- (xiv) the amount recovered from a trade debtor, to the extent determined under sub-sections (4) and (5);
- (xv) the amount withdrawn from any special reserve created and maintained under any provision of this Code or the Income-tax Act, 1961, for which deduction has been allowed, if the amount is not utilised for the purpose and within the period specified therein;
- (xvi) the amount accrued or received from his employees as their contribution to any fund for their welfare;
- (xvii) the amount accrued or received on sale of any business capital asset used for scientific research and development;
- (xviii) any income from a business, received after its discontinuance;
- (xix) any consideration accrued or received in respect of transfer of any business capital asset self generated in the course of the business;
- (xx) any amount accrued or received on account of the cessation, termination or forfeiture of any agreement entered in the course of the business;
- (xxi) any amount accrued or received, whether as advance, security deposit or otherwise, from the long term leasing, or transfer of,-
  - (a) whole or part of any business asset; or
  - (b) any interest in any business asset;
- (xxii) any amount accrued or received as reimbursement of any expenditure incurred;
- (xxiii) any interest accrued to, or received by, a person being a permitted financial institution; and
- (xxiv) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if -
  - (a) the payment or aggregate of payments is in respect of any expenditure referred to in sub-section (1) of section 32;
  - (b) the expenditure is allowable as a deduction in any financial year;
  - (c) the payment or aggregate of payments exceeds a sum of-
    - (I) thirty thousand rupees if the payment is made for carriage of goods by road; and
    - (II) twenty thousand rupees in any other case;
  - (d) it has not been incurred in such cases and under such circumstances, as may be prescribed;
- (xxv) any amount standing to the credit of the Fund referred to in section 75, if-
  - (a) income-tax has not been paid on such amount in any financial year preceding the relevant financial year; and
  - (b) the amount is shared during the relevant financial year, either wholly or in part, with a recognised stock exchange or recognised commodity exchange.

- (3) The gross earnings from business shall not include the following, namely:-
- (a) dividend;
  - (b) interest other than interest accrued to, or received by, a person being a permitted financial institution;
  - (c) income from letting of any house property owned by the person, other than income from letting of any house property in the course of running a hotel, convention centre or cold storage;
  - (d) income from the transfer of an investment asset;
  - (e) the reduction or remission of any liability by way of loan, deposit or advance received by a person, being an individual, from his relative.
- (4) The amount of recovery from a trade debtor, referred to in clause (xiv) of sub-section (1), shall be the amount determined in accordance with the formula—  

$$A - (B + C + D)$$
Where, A = amount recovered from the debtor during the financial year;  
B = amount of the debt outstanding in the account of the debtor at the beginning of the financial year;  
C = amount of debt in respect of the debtor transferred to any other account and not allowed as a deduction in any financial year;  
D = amount of debt added during the financial year in respect of such debtor; and
- (5) The amount referred to in sub-section (4) shall be nil if the amount 'A' in that sub-section is less than the amount 'B + C + D' therein.

### **Deduction for business expenditure**

32. (1) The amount of business expenditure referred to in section 30 shall be the aggregate of the amount of,-
- (a) the operating expenditure referred to in section 33, incurred by the person for the purposes of the business carried on during the financial year;
  - (b) permitted finance charges referred to in section 34, incurred by the person for the purposes of the business carried on during the financial year;
  - (c) capital allowances referred to in sections 35, in respect of the business carried on by the person during the financial year.
- (2) The provisions for deduction of capital allowances referred to in sub-section (1) shall apply, whether or not the person has claimed the deduction in computing the total income.
- (3) The Assessing Officer may restrict the amount of deduction under this section to such amount as he considers appropriate having regard to the use of the asset for the purposes of the business if such asset is not exclusively used for the purposes of the business.

### **Deduction for operating expenditure**

33. (1) The amount of operating expenditure referred to in clause (a) of sub-section (1) of section 32 shall be the aggregate of -
- (a) the amount of expenditure specified in sub-section (2), if -
    - (i) the expenditure is laid out or expended, wholly and exclusively, for the purposes of the business; and
    - (ii) it fulfills all other conditions, if any, specified therein; and
  - (b) the amount of deductions specified in sub-section (3) subject to the fulfillment of the conditions, if any, specified therein.

- (2) The amount of expenditure referred to in clause (a) of sub-section (1) shall be the amount of expenditure on, or on account of,-
- (i) purchase of raw material, stores, spares and consumables, or stock-in-trade;
  - (ii) rent actually paid for any premises if it is occupied by the person and used by him;
  - (iii) repairs to buildings if it is occupied and used by the person and the repairs are current in nature;
  - (iv) land revenue, local rates or municipal taxes in respect of premises occupied and used by the person;
  - (v) repair to, or replacement of parts of, machinery, plant or furniture used by the person, if the repair or replacement is current in nature;
  - (vi) maintenance of computer software or hardware;
  - (vii) salary or wages to employees;
  - (viii) remuneration to any working participant to the extent it is in accordance with the agreement of the association and relates to the period falling after the date of the agreement;
  - (ix) any premium paid to effect, or to keep in force, an insurance in respect of,-
    - (a) any premise occupied and used by the person;
    - (b) any machinery, plant or furniture used by the person;
    - (c) stocks or stores belonging to the person;
    - (d) the health of any employee of the person; and
    - (e) any other asset owned by the person;
  - (x) any premium paid by a person, being a federal milk co-operative society, to effect, or to keep in force, an insurance in respect of the cattle owned by a member of a primary society engaged in supplying milk, raised by its members, to the person;
  - (xi) welfare of workmen and staff;
  - (xii) power and fuel;
  - (xiii) freight, clearing and forwarding charge;
  - (xiv) selling expense in the nature of commission, brokerage, discount, or warranty charge;
  - (xv) sales promotion including advertisement and publicity not exceeding the amount charged to profit and loss account;
  - (xvi) training of employees;
  - (xvii) conference;
  - (xviii) use of hotel or boarding and lodging facilities;
  - (xix) conveyance, tour or travel;
  - (xx) repair, running or maintenance of motor car or aircraft;
  - (xxi) postage and telecommunication;
  - (xxii) audit and such other professional fee;
  - (xxiii) legal expenses;
  - (xxiv) entertainment and provision of hospitality;
  - (xxv) maintenance of any accommodation in the nature of guest-house;
  - (xxvi) subscription, including entrance fee, to a club or a trade association or the use of their facilities;
  - (xxvii) festival celebration;
  - (xxviii) salary to an employee engaged in, or on the purchase of material used in, scientific research and development, within three years immediately preceding the commencement of the business;
  - (xxix) scientific research and development related to the business;



- (xxx) contribution by a person, being an employer, to an approved fund subject to such limits and conditions, as may be prescribed and to the extent the amount is actually paid;
- (xxx i) contribution to the employees account in any fund, referred to in clause (xvi) of sub-section (2) of section 31, to the extent,-
  - (a) the amount has been received from his employees as their contribution to the fund; and
  - (b) it is actually paid.
- (xxx ii) any head office expenditure by a non-resident, as is attributable to his business in India, to the extent of an amount equal to one-half per cent. of the total sales, turnover or gross receipts;
- (xxx iii) cost of acquisition of the asset as in the case of the predecessor and cost of any improvement made thereto and expenditure incurred wholly and exclusively in connection with the transfer of the asset, by the predecessor, if -
  - (a) the person is the successor in the business reorganisation;
  - (b) the asset becomes the property of the person under a scheme of business reorganisation; and
  - (c) the asset is sold by the person as a business trading asset;
- (xxx iv) cost of acquisition of the asset as in the case of the transferor or the donor, and cost of any improvement made thereto and expenditure incurred wholly and exclusively in connection with the transfer of the asset (including the payment of gift tax, if any), by the transferor or the donor, if -
  - (a) the person is the transferee or the donee;
  - (b) the asset becomes the property of the person on the total or partial partition of a Hindu undivided family or under a gift or will or an irrevocable trust; and
  - (c) the asset is sold by the person as a business trading asset;
- (xxx v) protecting or safeguarding the goodwill of the person, which has necessarily to be preserved for the purpose of his business;
- (xxx vi) business reorganisation, dissolution or liquidation of the business;
- (xxx vii) tax, duty, cess, royalty or fee, by whatever name called, under any law for the time being in force, if the amount is actually paid;
- (xxx viii) bonus or commission to employees for services rendered if-
  - (a) the amount would not have been payable to employees as profits or dividends had it not been paid as bonus or commission; and
  - (b) the amount is actually paid;
- (xxx ix) encashment of leave to the credit of his employees, to the extent the amount is actually paid; and
- (xl) gratuity to his employees on their retirement or on termination of their employment, to the extent the amount is actually paid;
- (xli) the objects and purposes of a body corporate, authorised by the Central, State or Provincial Act under which it is constituted or established and notified by the Central Government in the Official Gazette for the purposes of this clause;
- (xlii) the amount paid by a public financial institution by way of contribution to a credit guarantee fund trust for small industries which is notified by the Central Government in the Official Gazette for the purposes of this clause; and
- (xliii) the amount of any other expenditure.

- (3) The amount of deductions referred to in clause (b) of sub-section (1) shall be the following:-
- (a) the value of inventory of the business, as at the beginning of the financial year;
  - (b) loss of inventory, or money, on account of theft, robbery, fraud or embezzlement, occurring in the course of the business, if the inventory, or the money, is written off in the books of account;
  - (c) any amount credited to the provision for bad and doubtful debts account, not exceeding one percent of the aggregate average advances computed in the prescribed manner if,-
    - (i) the person is a permitted financial institution;
    - (ii) the amount is charged to the profit and loss account for the financial year in accordance with the prudential norms of the Reserve Bank of India in this regard; and
    - (iii) the amount of trade debt or part thereof written off as irrecoverable in the books of the person is debited to the provision for bad and doubtful debts account;
  - (d) the debit balance, if any, on the last day of the financial year, in the provision for bad and doubtful debts account made under clause (c), if the balance has been transferred to the profit and loss account of the financial year;
  - (e) trade debt or part thereof, if,-
    - (i) the person is not a permitted financial institution; and
    - (ii) the amount is written off as irrecoverable in the books of the person;
  - (f) payment to a creditor, determined in accordance with the formula -  

$$A - (B + C)$$
 Where -
 

A	=	amount paid to the creditor during the financial year in discharge of existing or remitted liability which has been included in the total income by virtue of clause (xiii) of sub-section (2) of section 31;
B	=	amount of liability outstanding in the account of the creditor at the beginning of the financial year;
C	=	amount of liability added during the financial year in respect of the creditor; and

 the amount 'A' is greater than the amount of 'B+C';
    - (g) the networth of any undertaking transferred under a slump sale;
- (4) Notwithstanding anything to the contrary contained in sub-section (2) or sub-section (3) the amount of operating expenditure shall not include the amount of expenditure, being in the nature of, or on account of, -
- (a) personal expenses of the person;
  - (b) capital expenditure including expenditure in respect of which capital allowance is allowable under section 35;
  - (c) finance charges;
  - (d) any unascertained liability of the person;
  - (e) remuneration payable to any sleeping participant;
  - (f) any expenditure incurred by a person on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party;
  - (g) wealth-tax; and
  - (h) any rate or tax,-
    - (i) levied on the profits of any business ;

- (ii) assessed at a proportion of , or otherwise on the basis of, the profits of any business; or
  - (iii) paid which is eligible for relief of tax under section 206 or section 258, as the case may be; and
  - (i) any dividend declared or distributed.
- (5) Any amount of expenditure or deduction referred to in sub-section (1) or sub-section (2) or under section 34 or under section 35, which is not allowable by reason of the fact that the expenditure is in violation of the condition, if any, or is in excess of the amount, if any, specified therein, shall not be allowed as a deduction under clause (xliii) of sub-section (2) only on the reasoning that it is laid out or expended, wholly and exclusively, for the purposes of business.
- (6) The deduction in respect of the amount referred to in clause (xxx), and clauses (xxxvii) to (xl), of sub-section (2) shall, notwithstanding anything contained in sub-section (1), be allowed in the financial year in which the amount is actually paid or in the financial year in which the liability has arisen, whichever is later.

### Deductions for permitted finance charges

- 34.** (1) The amount of permitted finance charges referred to in clause (b) of sub-section (1) of section 32 shall be:-
- (a) the amount of interest paid on any capital borrowed or debt incurred;
  - (b) the amount of interest paid to trade creditors;
  - (c) the amount of interest paid to any participant to the extent it is in accordance with the agreement of the association and relates to the period falling after the date of the agreement;
  - (d) the amount of any charge or fee paid in respect of any credit facility which has not been utilized;
  - (e) the amount of any incidental financial charges;
  - (f) the proportionate amount of discount or premium payable on any bond or debenture issued by the person, calculated in the manner as may be prescribed.
- (2) The amount of permitted finance charges referred to in sub-section (1) shall not include-
- (a) any amount paid in respect of capital borrowed or debt incurred for acquisition of a capital asset (whether capitalized in the books of account or not) for any period -
    - (i) in the case of a new business, prior to the date of commencement of such business; and
    - (ii) in any other case, prior to the date on which such asset was first put to use; and
  - (b) any amount of incidental financial charges for issue of debentures, bonds or share capital.
- (3) The amount of interest on any capital borrowed or debt incurred, which is payable to any permitted financial institution, shall be allowed as a deduction, regardless of anything contained in sub-section (1), in the financial year in which the amount is actually paid or in the financial year in which the liability has accrued, whichever is later.
- (4) Any interest referred to in sub-section (3) which has been converted into a loan or borrowing shall not be deemed to have been actually paid for the purposes of that sub-section.
- (5) For the purposes of this section, 'capital borrowed' shall include recurring subscriptions received periodically from shareholders, or subscribers, in Mutual Benefit Societies, which fulfils such conditions as may be prescribed.

### Computation of capital allowances

35. (1) The amount of capital allowances referred to in clause (c) of sub-section (1) of section 32 shall be the aggregate of the amount in respect of,-
- (a) depreciation of business capital assets;
  - (b) initial depreciation of business capital assets;
  - (c) terminal allowance; and
  - (d) scientific research and development allowance.
- (2) The depreciation, initial depreciation or terminal allowance, referred to in sub-section (1), shall be allowed in respect of any business capital asset if the asset is,-
- (a) owned, wholly or partly, by the person; and
  - (b) used for the purposes of the business of the person.
- (3) The condition referred to in clause (a) of sub-section (2) shall not apply in the case of a business capital asset being a capital expenditure on any building which is held by the person under a lease or other right of occupancy.
- (4) A business capital asset shall be deemed to be owned by the person if he is a lessee in terms of a financial lease.

### Computation of depreciation

36. (1) The amount of depreciation of business capital assets referred to in section 35 shall be the aggregate of the following :-
- (a) such percentage of the adjusted value of any block of assets as specified in the Fifteenth Schedule, in respect of all the business capital assets forming part of the relevant block of assets specified therein; and
  - (b) nil, in respect of any other business capital asset not forming part of any block of assets specified in the Fifteenth Schedule.
- (2) The depreciation allowance on assets referred to in section 35 shall, regardless of the fact that all business capital assets in any block of assets have ceased to exist by reason of being demolished, destroyed, discarded or transferred, be allowed to a person in respect of the block of asset if the adjusted value of the block of assets is greater than zero.
- (3) The provision of sub-section (2) shall not apply to any block of asset in respect of which the percentage specified in the Fifteenth Schedule for computing depreciation under sub-section (1) is zero.
- (4) The depreciation in respect of any business capital asset shall, regardless of anything to the contrary contained in any other provision of the Code, be deemed to have been actually allowed if,-
- (a) the asset does not form part of any block of assets specified in the Fifteenth Schedule; or
  - (b) the expenditure incurred for acquiring the asset has been allowed as a deduction under any provision of this Code.

### Deduction for initial depreciation

37. (1) A person shall be allowed, in addition to depreciation, an initial depreciation of business capital assets if, -
- (a) the person is engaged in the business of manufacture or production of any article or thing;
  - (b) the asset is a new asset forming part of the class of assets 'Machinery and Plant' in the Fifteenth Schedule;
  - (c) the asset was not used either within or outside India by any other person before its installation by the person;

- (d) the asset is not installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
  - (e) the asset is not in the nature of any office appliances; and
  - (f) the whole of the actual cost of the asset is not allowed as a deduction (whether by way of depreciation or otherwise) in computing the income under the head "Income from business" of any one financial year.
- (2) The initial depreciation referred to in sub-section (1) shall be,-
    - (a) an amount equal to twenty per cent. of the actual cost of the asset;and
    - (b) allowed in the financial year in which the asset is installed and used for the purposes of the business of the person.
  - (3) The deduction under this section in respect of such asset shall be restricted to fifty per cent of the sum referred to in sub-section (2) if -
    - (a) the asset is acquired by the assessee during the financial year; and
    - (b) is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.

### **Deduction for terminal allowance**

38. (1) A person shall be allowed a terminal allowance in respect of a block of asset if,-
  - (a) the block of assets have ceased to exist by reason of being demolished, destroyed, discarded or transferred during the financial year; and
  - (b) the percentage specified in the Fifteenth Schedule for computing depreciation in respect of the block is zero.
- (2) The terminal allowance referred to in sub-section (1) shall be computed in accordance with the formula -  

$$A + B - C$$
 Where
  - A = the written down value of the block of asset at the beginning of the financial year;
  - B = the actual cost of any asset falling within that block, acquired during the financial year;and
  - C = the amount accrued or received in respect of the assets which are demolished, destroyed, discarded or transferred during the financial year together with the value of the carcass or the scrap, if any.
- (3) The terminal allowance referred to in sub-section (1) shall be treated as 'nil', if the net result of the computation, thereunder, is negative.

### **Deduction for scientific research and development allowance**

39. (1) A company shall be allowed a deduction equal to one hundred and fifty per cent. of the expenditure incurred on,-
  - (a) creating and maintaining an in-house facility for scientific research and development; and
  - (b) carrying out scientific research and development in the in-house facility.
- (2) The deduction under sub-section (1) shall be allowed if,-
  - (a) the company creates and maintains an in-house facility for carrying out scientific research and development;
  - (b) the research facility is approved by the Central Government on the basis of recommendation of the prescribed authority;
  - (c) the company enters into an agreement with the prescribed authority for cooperation in the research and development facility and for audit of the accounts maintained for that facility.

- (3) The approval granted by the prescribed authority to a predecessor shall be deemed to have been granted to the successor if the approval is transferred to the successor as a result of a business reorganisation.
- (4) The deduction under this section shall not be allowed to a company in respect of the expenditure referred to in sub-section (1), if the expenditure is incurred in the course of its business which is in the nature of scientific research and development.
- (5) The provisions of sections 32 to 38 shall, as far as may be, apply to the expenditure in respect of which deduction is not allowed under sub-section (4).
- (6) The Board may prescribe by rules the procedure for grant of approval by the prescribed authority.

### **Profit on transfer of a business capital asset**

40. (1) The profits from transfer of a business capital asset shall be computed in accordance with the formula -
- $$A - (B + C)$$
- Where
- A = the amount accrued or received in respect of the asset, which is transferred, discarded, demolished or destroyed during the financial year together with the amount of scrap value, if any;
  - B = the written down value of, -
    - (i) the block of asset at the beginning of the financial year if the asset forms part of the block of asset specified in the Fourteenth Schedule; and
    - (ii) the asset at the beginning of the financial year, in any other case.
  - C = the actual cost of any asset falling within that block, acquired during the financial year.
- (2) The profit referred to in sub-section (1) shall be treated as 'nil', if the net result of the computation, thereunder, is negative.

### **Special provisions relating to business reorganisation**

41. (1) The deduction for any capital allowance referred to in section 35 shall, in a case where business reorganisation has taken place during financial year, be allowed in accordance with the provisions of this section.
- (2) The amount of deduction allowable to the predecessor shall be determined in accordance with the formula -
- $$A \times \frac{B}{C}$$
- Where
- A = the amount of deduction allowable as if the business reorganisation had not taken place;
  - B = the number of days comprised in the period beginning with the 1<sup>st</sup> day of the financial year and ending on the day immediately preceding the date of business reorganisation;
  - C = the total number of days in the financial year in which the business reorganisation has taken place.
- (3) The amount of deduction to the successor shall be determined in accordance with the formula -
- $$A \times \frac{B}{C}$$
- Where
- A = the amount of deduction allowable as 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.

### Meaning of actual cost

42. (1) The actual cost of a business asset to the assessee shall be computed in accordance with the formula—

$$\frac{[A-(B+C)]-(D \times A)}{E}$$

Where A = cost of the business asset to the assessee including the interest paid on the capital borrowed for acquiring the asset for the period before the asset is put to use;

B = the amount paid or payable as interest in connection with the acquisition of the asset for any period after the asset is first put to use if the amount is included in the amount 'A';

C = the amount of additional duty leviable under section 3 of the customs Tariff Act, 1975 or the amount of duty of excise, in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944;

D = the amount of subsidy, grant or reimbursement (by whatever name called) received by the assessee, directly or indirectly, from the Central Government, a State Government, any authority established under any law or by any other person in respect of, or with reference to, any asset including the relevant asset;

E = cost of all the assets in respect of or with reference to which the amount 'D' is so received.

- (2) The Assessing Officer may, notwithstanding anything contained in sub-section (1), determine, with the previous approval of the Joint Commissioner, the actual cost if -
- (a) the assets were business assets at any time before the date of acquisition by the assessee; and
  - (b) the Assessing Officer is satisfied that the main purpose of the transfer of the assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost).
- (3) The actual cost of the business asset to the assessee shall be the deemed written down value, if -
- (a) the asset is acquired by the assessee by way of gift or inheritance or under a slump sale; or
  - (b) the asset is converted by the assessee into a business asset in any financial year; or
  - (c) the assessee is transferee holding or a transferee subsidiary company.
- (4) The actual cost of a business asset to the assessee shall, in a case of sale and buy back transaction in the business asset, be the lower of the following:-
- (a) the actual price for which the asset is re-acquired by him; and
  - (b) the deemed written down value.
- (5) The actual cost of the business asset to a transferee assessee shall be the written down value of the asset at the beginning of the financial year in the case of the transferor if the transferor re-acquires the asset by way of lease, hire or otherwise from the transferee assessee.



- (6) The actual cost of an asset to an assessee shall be the actual cost of the asset, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee if,-
- the assessee is a non-resident;
  - the asset was acquired by him outside India; and
  - the asset is brought by him to India.
- (7) The actual cost of an asset being the prescribed preliminary expenses shall not exceed an amount equivalent to five per cent. of -
- the cost of the project, or
  - at the option of the assessee being an Indian company, the capital employed in the business.
- (8) The actual cost of an asset shall be treated as 'nil', if-
- deduction in respect of the cost of the asset has been allowed or is allowable to the assessee under The Eleventh Schedule or The Twelfth Schedule or The Thirteenth Schedule; or
  - deduction in respect of the cost of the asset has been allowed or is allowable under any of the aforesaid Schedules to any other person and the assessee has acquired or received the asset by any of the 'special modes of acquisition'.
- (9) The Board may, for the purposes of determining the actual cost of a business asset, prescribe-
- any other cost which may be included in determining the actual cost; and
  - the method of determining the actual cost in the circumstances which are not provided for under this section.
- (10) For the purposes of this section, deemed written down value of a business asset shall be the actual cost to the assessee or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the assessee or the previous owner, as the case may be, for the preceding financial year as if the asset was the only asset in the relevant block of assets.

### Meaning of written down value, adjusted value of assets, etc.

43. (1) The written down value of any block of asset at the beginning of the financial year shall be the written down value of the block of assets at the close of the immediately preceding financial year.
- (2) The written down value of the block of assets at the close of the immediately preceding financial year shall be the adjusted value of the block of assets in the immediately preceding financial year as reduced by,-
- the amount of capital allowance, if any, allowed under section 35 during that year; and
  - any expenditure incurred for acquiring the asset to the extent allowed as a deduction in the financial year under any provision of this Code.
- (3) The adjusted value of any block of asset for any financial year shall be computed in accordance with the formula -
- $$(A+B) - (C+D+E)$$
- Where
- A= the written down value of the block of assets at the beginning of the financial year;
  - B = actual cost of any asset falling within the block, acquired during the financial year;
  - C = moneys receivable in respect of any asset falling within the block, which is sold or discarded or demolished or destroyed during the financial year;



D = amount of the scrap value, if any;

E = the aggregate of the deemed written down value of the assets transferred by any of the modes referred to in sub-section (3) of section 42.

- (4) The adjusted value of any block of asset under sub-section (3) shall be 'nil' if the amount (C+D+E) exceeds the amount (A+B); or
- (5) The adjusted value of the block of assets acquired by a successor in a business reorganisation for the financial year in which the business reorganisation has taken place shall be the amount which would have been taken as the adjusted value of the block of assets as if the business reorganisation had not taken place.
- (6) The written down value of the block of assets acquired by a successor in a business reorganisation on the last day of the financial year in which the business reorganisation has taken place shall be determined in accordance with the formula—  
 $A - (B + C)$

Where A = the adjusted value determined under sub-section (5);

B = the amount of deduction allowed to the predecessor under sub-section (3) of section 41 in respect of the asset;

C = the amount of deduction allowed to the successor under sub-section (4) of section 41 in respect of the asset.

- (7) The written down value of a block of asset comprising of any asset acquired in any financial year from a country outside India for the purposes of business shall be computed in accordance with the formula -

$A + (B - C) - D$

Where A = the written down value of the block of asset comprising of any asset acquired in any financial year from a country outside India as determined in accordance with sub-section (6) of section 42;

B = the amount of liability of the assessee, expressed in Indian rupees at the time of making payment towards -

- (a) the whole or a part of the cost of the asset; or  
 (b) repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any,

C = the amount of liability existing at the time of acquisition of the asset;

D = the whole or any part of the liability met, directly or indirectly, by any other person or authority.

- (8) The amount of liability of the assessee, expressed in Indian rupees at the time of making payment, shall, in a case where the assessee has entered into a forward contract, be computed with reference to the rate of exchange specified in such forward contract.
- (9) The Board may prescribe-
- (a) the method of determining the written down value or the adjusted written down value of the block of assets as on the first day of the first financial year;
- (b) the method of determining the allocation of the written down value or the adjusted written down value of the assets between the different businesses carried on by the assessee; and

- (c) the method of determining the written down value or the adjusted written down value of the block of assets in the circumstances which are not provided for under this section.
- (10) For the purposes of this section, the deemed written down value shall have the meaning assigned to it in sub-section (10) of section 42.

### **E. Capital gains**

#### **Capital gains**

44. (1) The income from the transfer of any investment asset shall be computed under the head “**Capital gains**”.
- (2) The income under the head “**Capital gains**” shall, without prejudice to the generality of the foregoing provisions, include the following,-
- (a) income from the transfer referred to in clause (c) or clause (d) of sub-section (1) of section 45, if,-
- (i) the parent company, or its nominee, ceases to hold the whole of the share capital of the subsidiary company; or
- (ii) the investment asset is converted by the transferee into, or treated by it as, its business trading asset;
- (b) the income from the transfer referred to in clause (e) of section 45, if any of the conditions laid down in clause (16) or clause (81), as the case may be, of section 284 is not complied with;
- (c) the amount of withdrawal referred to in sub-section (4) of section 53 to the extent determined in accordance with the formula -

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

- Where
- A = amount of deduction claimed under section 53;
- B = the amount withdrawn from the account under the capital gains deposit scheme, which is not utilised for the purposes of purchase or construction of the new investment asset within one month from the end of the month in which the amount is withdrawn;
- C = the net consideration as a result of the transfer of original investment asset; and

- (d) the amount of deposit referred to in sub-section (5) of section 53 to the extent determined in accordance with the formula -

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

- Where
- A = amount of deduction claimed under section 53;
- B = the balance in the account referred to in sub-section (5) of section 53, of the assessee, as on the first day of the financial year immediately following the three financial years from the end of the financial year in which the transfer of the original investment asset referred to in that section is effected;
- C = the net consideration as a result of the transfer of original investment asset.

**Income from certain transfers not to be treated as capital gains**

45. The income from the following transactions shall not be included in the computation of income under the head “**Capital gains**”:-
- (a) distribution of any investment asset on the total or partial partition of a Hindu undivided family;
  - (b) gift, or transfer under an irrevocable trust, of any investment asset, other than sweat equity share;
  - (c) transfer of any investment asset by a company to its subsidiary company, if—
    - (i) the parent company or its nominees hold the whole of the share capital of the subsidiary company,
    - (ii) the subsidiary company is an Indian company; and
    - (iii) the subsidiary company treats the asset as an investment asset;
  - (d) transfer of any investment asset by a subsidiary company to the holding company, if
    - (i) the whole of the share capital of the subsidiary company is held by the holding company or its nominees,
    - (ii) the holding company is an Indian company, and
    - (iii) the holding company treats the asset as an investment asset;
  - (e) transfer of any investment asset by a predecessor to a successor in a scheme under a business reorganisation if the successor is neither a non-resident nor a foreign company;
  - (f) transfer of any investment asset situated in India, by an amalgamating or demerged foreign company to the amalgamated or resulting foreign company, if -
    - (i) the transfer is effected under a scheme of amalgamation or demerger, as the case may be; and
    - (ii) the transfer does not attract tax on capital gains in the country, in which the amalgamating or demerged company is incorporated;
  - (g) transfer of shares of a predecessor by a shareholder under a scheme of business reorganisation, if-
    - (i) the transfer is made in consideration of the allotment to the shareholder of shares in the successor amalgamated company; and
    - (ii) the successor is neither a non-resident nor a foreign company;
  - (h) transfer of bonds or global depository receipts by a non-resident to another non-resident, if the transfer is made outside India;
  - (i) transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any other public museum or institution of national importance or of renown throughout any State or States and notified by the Central Government in the Official Gazette for this purpose;
  - (j) transfer by way of conversion of any bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;
  - (k) transfer by way of conversion of foreign exchange convertible bond of a company into shares or debenture of any company;
  - (l) transfer of any securities, if-
    - (i) the transfer is effected under a scheme for lending of any securities; and
    - (ii) the scheme is framed in accordance with the guidelines issued by the Securities and Exchange Board of India, or the Reserve Bank of India.

- (m) transfer of any investment asset, if -
  - (i) the transferor is a company; and
  - (ii) the asset of the company is distributed to its shareholders on its liquidation;
- (n) transfer of a investment asset under a will;

### Financial year of taxability

46. (1) The income from the transfer of an investment asset specified in column 2 of the Table 2 shall be the income of the financial year specified in column 3 of the said Table:

**Table-2 : Financial year of taxability**

Sl. No.	Nature of transfer	Financial year
(1)	(2)	(3)
a.	Transfer between parent and subsidiary company, referred to in clause (c) or clause (d) of sub-section (1) of section 45	(a) in a case where the investment asset is converted by the transferee into, or is treated by it as, business trading asset, the financial year in which the business trading asset is sold; (b) in the case of any other investment asset, the financial year in which the parent company, or its nominee, ceases to hold the whole of the share capital of the subsidiary company
b.	Transfer in a scheme under a business reorganisation, referred to in clause (e) of sub-section (1) of section 45. is not complied with.	The financial year in which any of the conditions referred to in clause (16) or clause 81, as the case may be, of section 284
c.	Transfer by way of compulsory acquisition under any law	The financial year in which the compensation or its part, as determined by the Central or State Government or the Reserve bank of India, is received.
d.	Transfer referred by way of conversion into, or its treatment as business trading asset	The financial year in which the converted or treated asset is sold or otherwise transferred.
e.	Transfer by way of - (i) contribution of the asset, whether by way of capital or otherwise, to a company or an unincorporated body, in which the transferor is, or becomes, a shareholder or participant, as the case may be; or (ii) the distribution of the asset on account of dissolution of an unincorporated body.	The financial year in which the asset is transferred or distributed.

Sl. No.	Nature of transfer	Financial year
(1)	(2)	(3)
f.	Transfer by way of part performance of a contract, referred to in sub-clause (i) of clause (287) of section 284	The financial year in which the possession of the immovable property is taken or retained.
g.	Transfer by way of damage or destruction referred to in sub-clause (m) of clause (287) of section 284	The financial year in which the money or asset is received.
h.	Transfer by way of distribution of the asset to a participant in an unincorporated body on account of his retirement from the body.	The financial year in which the money or the asset is distributed.
i.	Transfer by any mode other than the modes referred to in serial numbers a to h.	The financial year in which the transfer took place.
	(2) The amount referred to in clause (c) of sub-section (2) of section 44 shall, regardless of anything to the contrary contained in sub-section (1), be the income of the financial year in which the capital gains bond is transferred.	
	(3) The amounts referred to in clause (d) and clause (e) of sub-section (2) of section 44 shall, regardless of anything to the contrary contained in sub-section (1), be the income of the financial year in which the amount is withdrawn or of the fourth financial year immediately following the financial year in which the transfer of the original asset is effected, respectively.	

#### Computation of income from the transfer of any investment asset

47. (1) The income from the transfer of any investment asset during the financial year shall be the full value of the consideration accrued or received as a result of the transfer, as reduced by the aggregate amount of the deductions referred to in section 49.
- (2) The income from the transfer of each investment asset during the financial year, as computed under sub-section (1), shall be aggregated and the result of such aggregation shall be the 'current income from capital gains', for the financial year.
- (3) The 'current income from capital gains' shall be aggregated with the 'unabsorbed preceeding year capital loss', if any, and the result of such aggregation shall be the income under the head 'Capital gains'.
- (4) The income under the head 'Capital gains' shall be treated as 'nil' if the result of aggregation under sub-section (3) is negative and the absolute value of the net result shall be the amount of 'unabsorbed current capital loss', for the financial year.

#### Full value of the consideration

48. (1) The full value of the consideration shall be the amount received by, or accruing to, the transferor, directly or indirectly, as a result of the transfer of the investment asset.
- (2) The full value of the consideration shall, notwithstanding anything contained in sub-section (1), be,-
- (a) the amount of compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central

- Government or the Reserve Bank of India, if the transfer of the investment asset is by the mode specified in sub-clause (c) of clause (287) of section 284;
- (b) the fair market value of the asset as on the date of the transfer, if the transfer is by the mode specified in sub-clause (d) of clause (287) of section 284;
  - (c) the amount of consideration received, if the transfer is by the mode specified in sub-clause (e) of clause (287) of section 284;
  - (d) the amount recorded in the books of account of the company or unincorporated body as the value of the investment asset, if the transfer of the investment asset is by the mode specified in sub-clause (f) of clause (287) of section 284;
  - (e) the fair market value of the asset as on the date of the transfer, if such transfer is by the mode specified in sub-clause (g) of clause (287) of section 284;
  - (f) the amount of money, or the fair market value as on the date of the receipt of any asset, received under an insurance from an insurer, if the transfer of the investment asset is by the mode specified in sub-clause (m) of clause (287) of section 284;
  - (g) the amount of money, or the fair market value as on the date of distribution of any asset, received from a company under liquidation or dissolution, as reduced by the amount of dividend within the meaning of sub-clause (iii) of clause (89) of section 284, if the person is a shareholder of the company;
  - (h) the amount of money, or the fair market value as on the date of distribution of the asset, received by the participant, if the transfer of the asset is by the mode specified in sub-clause (o) of clause (287) of section 284;
  - (i) the fair market value as on the date of transfer of the asset, if the transfer is by the mode, and the asset is of the nature, specified in clause (b) of sub-section (1) of section 45;
  - (j) the higher of the stamp duty value of the asset and the value of the asset ascertained on reference, if any, to the Valuation Officer.
- (3) The reference to the Valuation Officer referred to in sub-section (2) shall be made, at the option of the assessee, if-
- (i) the asset is land or building; and
  - (ii) the consideration accrued, or received, as a result of the transfer of the asset is less than the stamp duty value of the asset.

### **Deduction for cost of acquisition, inflation-adjustment etc.**

49. (1) The deductions for the purposes of section 47 shall, in the case of an investment asset, be the following:-
- (i) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset;
  - (ii) the cost of acquisition, if any, of the asset; and
  - (iii) the cost of improvement, if any, of the asset.
- (2) However, if the investment asset is transferred at any time after one year from the end of the financial year in which the asset is acquired by the assessee, the deductions for the purposes of section 47 shall be the following:-
- (i) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset;
  - (ii) the indexed cost of acquisition, if any, of the asset;
  - (iii) the indexed cost of improvement, if any, of the asset; and
  - (iv) the amount of relief for rollover of the asset, as determined under section 53.

**Indexed cost of acquisition**

50. (1) The indexed cost of acquisition of an investment asset shall be the amount determined in accordance with the formula -

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

- Where A = the cost of acquisition of the asset;  
 B = the Cost Inflation Index for the financial year in which the asset is transferred;  
 C = the Cost Inflation Index for the financial year immediately following the financial year in which the asset was acquired by the person or for the financial year beginning on the first day of April 2000, whichever is later.

- (2) The indexed cost of improvement of an investment asset shall be the amount determined in accordance with the formula -

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

- Where A = the cost of improvement;  
 B = the Cost Inflation Index for the financial year in which the asset is transferred;  
 C = the Cost Inflation Index for the financial year immediately following the financial year in which the improvement to the asset took place or for the financial year beginning on the first day of April 2000, whichever is later.

**Cost of acquisition of an investment asset**

51. (1) The cost of acquisition of an investment asset, other than the asset referred to in sub-section (2) to sub-section (5), shall be,-

- (a) the purchase price of the asset, or  
 (b) at the option of the person, the fair market value of the asset on the 1<sup>st</sup> day of April, 2000, if the asset is acquired by the person before such date.

- (2) The cost of acquisition of an investment asset specified in column 2 of the Seventeenth Schedule, acquired by the mode specified in column 3 of the said Schedule, shall be the cost specified in column 4 therein.

- (3) The cost of acquisition of an investment asset acquired by the assessee by any of the special modes of acquisition, shall be,-

- (a) the cost for which the previous owner of the asset acquired it; or  
 (b) at the option of the person, the fair market value of the asset on the 1<sup>st</sup> day of April, 2000, if the asset is acquired by the previous owner or the person before such date.

- (4) The cost of acquisition of an investment asset forming part of a bundle of investment assets acquired by any participant, on distribution of the asset to him on account of his retirement from any unincorporated body, shall be the amount determined in accordance with the formula -

$$A - (B + C)$$

where, A= the amount payable to the participant as appearing in the books of account of the unincorporated body on the date of distribution;

B= any amount attributable to the change in the value of the bundle on account of revaluation of the bundle, if any, up to the date of distribution; and

- C= the cost of acquisition of any other asset, if any, forming part of the bundle acquired by the participant, on distribution of the asset to him on account of his retirement from any incorporated body if the cost of acquisition has been allowed as a deduction under section 49 in any earlier financial year.
- (5) The cost of acquisition of an investment asset shall, regardless of anything to the contrary contained in this section, be nil, if,-
    - (a) the asset is acquired by self-generation; or
    - (b) the cost of acquisition of the asset to the person or previous owner, if any, is incapable of being determined or ascertained, for any reason.
  - (6) The Board may, for the purposes of sub-section (1), prescribe the cost of acquisition of any investment asset and the method of determination thereof, having regard to the nature of the investment asset, mode of acquisition and the circumstances in which the asset became the property of the person.

**Cost of improvement**

52. (1) The cost of improvement of an investment asset shall be any expenditure of a capital nature incurred in making any additions or alterations to the asset ,-
  - (a) by the person; or
  - (b) by the previous owner, if the asset is acquired by any special modes of acquisition.
- (2) The cost of improvment of the investment asset, referred to in sub-section (1), shall, in a case where the cost of acquisition of the asset is taken as fair market value of the asset as on the 1st day of April, 2000, not include any capital expenditure referred therein, which is incurred before the 1st day of April, 2000.
- (3) The cost of improvement of an investment asset shall, regardless of anything to the contrary contained in sub-section (1), be ‘nil’ in relation to,-
  - (a) an investment asset acquired by self generation;
  - (b) any investment asset if the cost of improvement is incapable of being determined or ascertained, for any reason; and
  - (c) any undertaking transferred in slump sale.

**Relief for rollover of investment asset**

53. (1) An individual or a Hindu undivided family shall be allowed a deduction, in respect of rollover of any original investment asset, from the capital gain arising from the transfer of the asset in accordance with the provisions of this section.
- (2) The deduction referred to in sub-section (1) shall be computed in accordance with the formula -

$$A \times \frac{(B+C+D)}{E}$$

- Where
- A = the amount of capital gains arising from the transfer of the original asset;
  - B = the amount invested for purchase or in construction of the new asset within one year before the beginning of the financial year in which the transfer of original investment asset is effected;
  - C = the amount invested for purchase or in construction of the new asset during the financial year in which the transfer of original investment asset is effected;
  - D = the amount deposited in an account in any post office in accordance with the Capital Gains Deposit Scheme framed by



the Central Government in this behalf, by the end of the financial year in which the transfer of original investment asset is effected;  
 E = the net consideration received as a result of the transfer of the original asset.

- (3) The deduction computed under sub-section (2) shall not exceed the amount of capital gains arising from the transfer of the investment assets.
- (4) Any amount withdrawn from the account under the Capital Gains Deposit Scheme shall be utilised within one month from the end of the month in which the amount is withdrawn, for the purposes of purchase or construction of the new asset.
- (5) The amount deposited in the account under the Capital Gains Deposit Scheme shall be utilised for the purposes of purchase or construction of the new asset within three years from the end of the financial year in which the transfer of the original asset is affected.
- (6) The deduction under this section in respect of capital gain arising from an investment asset, specified in column (2) of Table-3, shall be allowed with reference to the corresponding new investment asset referred to in column (3) of the Table, subject to the fulfillment of conditions specified in column (4) therein.

**Table-3: Deduction in respect of capital gains**

Sl No.	Description of the original investment asset	Description of the new investment asset	Conditions
(1)	(2)	(3)	(4)
1.	Agricultural land	One or more pieces of agricultural land.	The original investment asset was- (i) an agricultural land during two years immediately preceding the financial year in which the asset is transferred; and (ii) acquired prior to one year before the beginning of the financial year in which the transfer of the asset took place.
2.	Any investment asset	Residential house.	(i) The assessee does not own any residential house, other than the new investment asset, on the date of transfer of the original investment asset; and (ii) The original investment asset was acquired prior to one year before the beginning of the financial year in which the transfer of the asset took place.
3.	Any investment asset	Deposit in an account maintained under the	(i) The original investment asset was acquired prior to one year before

Sl No.	Description of the original investment asset	Description of the new investment asset	Conditions
(1)	(2)	(3)	(4)
		Capital Gains Savings Scheme	the beginning of the financial year in which the transfer of asset took place; and (ii) The deposit is made within a period of sixty days from the date of transfer of the original investment asset.

### **F. - Income from residuary sources**

#### **Income from residuary sources**

- 54.** The income of every kind falling under the class 'income from ordinary sources', shall be computed under the head "Income from residuary sources", if it is not required to be included in computing the income under any of the heads specified in item A to D of section 14 .

#### **Computation of income from residuary sources**

- 55.** The income computed under the head "Income from residuary sources" shall be the gross residuary income as reduced by the amounts referred to in section 57.

#### **Gross residuary income**

- 56.** (1) The gross residuary income shall include all accruals, or receipts, in the nature of income, which do not form part of,-
- (a) income from special sources; and
  - (b) income under any of the heads specified in items A to D of section 14.
- (2) The gross residuary income shall, regardless of anything to the contrary contained in Part-B to Part-E of this Chapter and without prejudice to the generality of the provisions of sub-section (1), include the following, namely:-
- (a) dividends, other than dividends in respect of which dividend distribution tax has been paid under section 99;
  - (b) interest, other than interest accrued to, or received by, permitted financial institutions;
  - (c) income from the activity of owning and maintaining horses for running in horse race;
  - (d) any amount received from his employees as contributions to any fund setup for their welfare, if the income is not included under the head "Income from business";
  - (e) income from machinery, plant or furniture belonging to the person and let on hire, if the income is not included under the head "Income from business";
  - (f) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy;
  - (g) any amount received under a Keyman insurance policy including the sum allocated by way of bonus on such policy, if such income is not included under the heads "Income from employment" or "Income from business";

- (h) the aggregate of any moneys and the value of any specified property received, without consideration, by an individual or a Hindu undivided family;
- (i) the amount of voluntary contribution received by a person, other than an individual or a Hindu undivided family, from any other person;
- (j) any amount received, or retained, on account of settlement or breach of any contract, if not included under the head "Income from business";
- (k) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if -
  - (i) the payment or aggregate of payments is in respect of any expenditure referred to in clause (a) of sub-section (1) of section 57;
  - (ii) the expenditure is allowable as a deduction in any financial year;
  - (iii) the payment or aggregate of payments exceeds a sum of-
    - (A) thirty thousand rupees if the payment is made for carriage of goods by road; and
    - (B) twenty thousand rupees in any other case; and
  - (iv) it has not been incurred in such cases and under such circumstances, as may be prescribed;
- (l) any amount found credited in the books of an person maintained for the financial year, if -
  - (i) the person offers no explanation about the nature and source thereof; or
  - (ii) the person offers an explanation but fails to substantiate the explanation; or
  - (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;
- (m) the value of any investment made by the person in the financial year to the extent for which,-
  - (i) the person offers no explanation about the nature and source of the investments; or
  - (ii) the person offers an explanation but fails to substantiate the explanation; or
  - (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;
- (n) the value of any money, bullion, jewellery or other valuable article owned by the person to the extent for which,-
  - (i) the person offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article; or
  - (ii) the person offers an explanation but fails to substantiate the explanation; or
  - (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;
- (o) the amount of any expenditure incurred by the person in the financial year, if-
  - (i) the person offers no explanation about the source of such expenditure or part thereof; or
  - (ii) the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory;
- (p) any amount received as loan or deposit, otherwise than by an account payee cheque or account payee bank draft, from any person, if the aggregate amount of such loan or deposit exceeds twenty thousand rupees;

- (q) any repayment of loan or deposit, otherwise than by an account payee cheque or account payee bank draft, if the aggregate amount, including interest, due to the payee, either in his own name or jointly with any other person, on the date of such repayment exceeds twenty thousand rupees;
  - (r) any amount received, or withdrawn, under any circumstances, from any account maintained with any permitted savings intermediaries, referred to in sub-section (2) of section 66, representing, -
    - (i) the principal amount of the savings; or
    - (ii) interest, dividend, bonus, capital appreciation or any other form of return on the investment, by whatever name called;
  - (s) any amount deemed to be the income under sub-section (6) of section 71.
  - (t) the value of the net assets, held by any person on the first day of the financial year in which the person ceases to be a non-profit organisation, determined in the prescribed manner.
  - (u) any consideration accrued, or received, in respect of transfer of any business asset, which is self-generated, if the consideration is not included under the head 'income from business';
  - (v) any amount accrued, or received, on account of the cessation, termination or forfeiture of any agreement entered by the person, if the amount is not included under the head 'income from business';
  - (w) any amount accrued, or received, as reimbursement of any expenditure incurred by the person, if the amount is not included under the head 'income from business';
  - (x) any amount received, or withdrawn, under any circumstances from the account maintained under the Capital Gains Savings Scheme representing the principal amount or any accretion thereto;
  - (y) any amount received, or withdrawn, under any circumstances from the Retirement Benefit Account referred to in sub-section (2) of section 22, representing the principal amount or any accretion thereto; and
  - (z) any amount accrued, or received, as advance, security deposit or otherwise, from the long term leasing or transfer of whole or part of, or any interest in, any investment asset.
- (3) The amount referred to in clause (h) of sub-section (2) shall not include any amount received -
- (a) from any relative;
  - (b) on the occasion of the marriage of the individual;
  - (c) under a will or by way of inheritance;
  - (d) in contemplation of death of the payer;
  - (e) from any local authority; or
  - (f) from any non-profit organisation.
- (4) For the purposes of this section,-
- (a) 'relative' shall not include any person referred to in sub-clause (g) of clause (233) of section 284;
  - (b) 'specified property' shall mean-
    - (i) immovable property being land or building or both;
    - (ii) shares and securities;
    - (iii) jewellery;
    - (iv) archaeological collections;
    - (v) drawings;
    - (vi) paintings;

- (vii) sculptures; or
- (viii) any work of art;
- (c) the assessee shall be deemed not to have received, or withdrawn, any amount in the financial year from any account maintained with any permitted savings intermediary, if the amount is used for,-
  - (i) purchasing an annuity plan; or
  - (ii) rolling over the amount from one account with the permitted savings intermediary to any other account with the same or any other permitted savings intermediary; and
- (d) value of any property referred to in clause (h) of sub-section (2) shall be,-
  - (i) the stamp duty value in the case of an immovable property as reduced by the amount of consideration, if any, paid by the assessee; and
  - (ii) the fair market value in the case of any other property as reduced by the amount of consideration, if any, paid by the assessee;

### Deductions

- 57.** (1) The amount of deductions referred to in section 55 shall be the aggregate of -
- (a) the amount of expenditure specified in sub-section (2), if -
    - (i) the expenditure is laid out or expended, wholly and exclusively, for the purposes of making or earning the gross residuary income; and
    - (ii) it fulfills all other conditions, if any, specified therein; and
  - (b) the amount of deductions specified in sub-section (3) subject to the fulfilment of the conditions, if any, specified therein;
- (2) The amount of expenditure referred to in clause (a) of sub-section (1) shall be the following:-
- (a) any reasonable sum paid by way of remuneration or commission;
  - (b) the amount determined, so far as may be, in accordance with the provisions of clause (ii), or clause (iii), of sub-section (2) of section 33;
  - (c) the amount determined, so far as may be, in accordance with the provisions of clause (xxxi) of sub-section (2) of section 33 in respect of income of the nature referred to in clause (d) of sub-section (2) of section 56;
  - (d) the amount determined, so far as may be, in accordance with the provisions of section 35 and subject to the provisions of sub-section (3) of section 32 in respect of income of the nature referred to in clause (e) of sub-section (2) of section 56; and
  - (e) any other expenditure, not being in the nature of capital expenditure.
- (3) The amount of deduction referred to in clause (b) of sub-section (1) shall be the following -
- (a) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, if -
    - (i) the premium payable for any of the years during the term of the policy does not exceed five per cent of the actual capital sum assured; and
    - (ii) the sum is received only upon completion of the original period of contract of the insurance or upon the death of the insured;
  - (b) the amount equal to thirty-three and one-third per cent of income or fifteen thousand rupees, whichever is less, in respect of family pension; and
  - (c) the aggregate amount referred to in clause (h) of sub-section (2) of section 56 to the extent the aggregate does not exceed fifty thousand rupees.
- (4) The amount of deduction referred to in section 55 shall, in the case of the income referred to in sub-section (6) of section 85, be a sum equal to fifty per cent of the income, regardless of anything to the contrary contained in this section.

- (5) The following amounts shall, regardless of anything to the contrary contained in this section, not be allowed as a deduction, namely:-
- any amount relating to personal expenses of the person;
  - any amount paid on account of wealth-tax; or
  - any sum received under a Keyman insurance policy;
- (6) The provisions of sub-section (6) of section 33 shall, so far as may be, apply in computing the income under this head as they apply in computing the income under the head "Income from business".

### **G. Aggregation of income**

#### **Aggregation of income under the class 'Income from Ordinary Sources'**

58. (1) The income under any head of income, other than 'Capital gains', for any financial year shall be the aggregate of the amount of income computed in respect of each source of income falling under that head of income, for the financial year.
- (2) The income under any head of income for any financial year, as computed under sub-section (1), shall be aggregated with the income under any other head of income computed under that sub-section or section 47, for the financial year; and the net result of the aggregation shall be the 'current income from ordinary sources', for the financial year.
- (3) The 'current income from ordinary sources' shall be aggregated with the 'unabsorbed preceeding year loss from the ordinary sources', if any; and the net result of the aggregation shall be the 'gross total income from ordinary sources', for the financial year.
- (4) The 'gross total income from ordinary sources', for the financial year, shall be treated as 'nil', if the net result of the aggregation under sub-section (3) is negative; and the absolute value of the net result shall be the amount of 'unabsorbed current loss from ordinary sources', for the financial year.

#### **Aggregation of income under the class 'Income from Special Sources'**

59. (1) The income from any special source referred to in Rule 3 of the First Schedule shall be the 'current income from the special source', for the financial year.
- (2) The 'current income from the special source' referred to in sub-section (1) shall be aggregated with the 'unabsorbed preceeding year loss from the special source', if any; and the net result of the aggregation shall be the 'gross total income from the special source', for the financial year.
- (3) The 'gross total income from the special source' referred to in sub-section (2) shall be treated as 'nil', if the net result of the aggregation under sub-section (3) is negative; and the absolute value of the net result shall be the amount of 'unabsorbed current loss from the special source', for the financial year.
- (4) The 'gross total income from any special source' computed under the foregoing provisions shall be aggregated with the 'gross total income from any other special source', computed under the foregoing provisions, for the financial year; and the net result of the aggregation shall be the 'total income from special sources', for the financial year.

#### **Determination of total income**

60. The total income of a person for any financial year shall be computed in accordance with the formula-
- $$(A - B) + C$$

Where A = the 'gross total income from ordinary sources', for the financial year;  
 B = the aggregate amount of deductions allowed under sub-chapter I;  
 and  
 C = the 'total income from special sources', for the financial year.

### Special provisions relating to business reorganisation

61. (1) The provisions of this section shall apply, if the successor satisfies the test of continuity of business.
- (2) The 'unabsorbed current loss from ordinary sources' of the predecessor, in respect of the financial year in which business reorganisation has taken place, shall be deemed to be the 'unabsorbed preceeding year loss from ordinary sources' of the successor in respect of the financial year; and the provisions of section 58 shall apply accordingly.
- (3) The 'unabsorbed current loss from special source' of the predecessor for the financial year in which business reorganisation has taken place, shall be deemed to be the 'unabsorbed preceeding year loss from that special source' of the successor for the financial year; and the provisions of section 59 shall apply accordingly.
- (4) The provision of this section shall not apply to a successor, if-
- the predecessor is a sole proprietary concern or an unincorporated body; and
  - the share holding of the sole proprietor or the participant, as the case may be, ceases to be less than fifty per cent of the total value of the shares of the successor company at any time during the period of five years immediately succeeding the financial year in which the business reorganisation takes place.
- (5) The total income of the financial year in which the business reorganisation took place and all the subsequent financial years shall, regardless of anything to the contrary contained in this Code, be rectified as if the provisions of this section had never been given effect to in those financial years if the test of continuity of business, or any of the conditions specified in sub-section (4), is not satisfied at any time during five financial years immediately succeeding the financial year in which the business reorganisation takes place.

### Aggregation of losses in case of change in constitution of unincorporated body

62. (1) The amount of 'unabsorbed current loss from ordinary sources' calculated under sub-section (4) of section 58, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.
- (2) The amount so reduced under sub-section (1) shall be the 'unabsorbed preceeding year loss from ordinary sources', for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (3) of section 58.
- (3) The amount of 'unabsorbed current loss from the special source' calculated under sub-section (3) of section 59, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.
- (4) The amount so reduced under sub-section (3) shall be the 'unabsorbed preceeding year loss from the special source', for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (2) of section 59.
- (5) The provisions of this section shall apply notwithstanding anything to the contrary contained in any other provision of this Code.



- (6) For the purposes of this Code, any reference to the ‘unabsorbed preceeding year loss from ordinary sources’ and ‘unabsorbed preceeding year loss from the special source’ in respect of an unincorporated body where a change has occurred in its constitution due to death, or retirement, of its participant, shall be construed as a reference to the amount so reduced under sub-section (1) and sub-section (3) respectively.

### Aggregation of losses in the case of certain companies

63. (1) A closely-held company shall, regardless of anything to the contrary contained in this Chapter, not be allowed to aggregate any ‘unabsorbed preceeding year loss from ordinary sources’ or ‘unabsorbed preceeding year loss from the special source’ with the income of the financial year unless it satisfies the test of continuity of ownership.
- (2) The closely-held company shall satisfy the test of continuity of ownership referred to in sub-section (1), if -
- (a) the shares of the company beneficially held by persons, carrying not less than fifty-one per cent of the voting power on the last day of the financial year immediately preceeding the relevant financial year, are held by the same persons on the last day of the relevant financial year.
- (3) For the purposes of calculating the percentage of voting power under sub-section (2), -
- (a) any change in the voting power in the relevant financial year due to the death of a shareholder or on account of transfer of shares by way of gift to any relative of the donor shareholder shall be ignored;
- (b) any change in the shareholding of an Indian company, which is a subsidiary of a foreign company, as a result of amalgamation or demerger of a foreign company, shall be ignored, if fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

### Aggregation of loss not to be allowed in the case of filing of return after due date

64. The amount of ‘unabsorbed current capital loss’, ‘unabsorbed current loss from ordinary sources’ and the ‘unabsorbed current loss from the special source’, for the financial year shall, regardless of anything contained in any provision of this Code, be deemed to be ‘nil’, if the return of income for the financial year is not furnished by the due date.

## H. - Tax incentives

### Deductions to be made in computing total income

65. (1) A person shall be allowed the deductions specified in this sub-chapter from his ‘gross total income from ordinary sources’, for the financial year.
- (2) The aggregate amount of the deductions under this sub-chapter shall not exceed the ‘gross total income from ordinary sources’, for the financial year.
- (3) The aggregate amount of deductions under section 66 and section 67 shall not exceed three hundred thousand rupees in any financial year.
- (4) Any sum, which qualifies for a deduction under this sub-chapter in any financial year, shall not qualify for deduction -
- (a) under any other provision of this Code for the same or any other financial year; or
- (b) in the case of any other person.



- (5) The provisions of sub-section (4) shall apply irrespective of whether full deduction has been allowed, or not, in respect of the sum referred therein.

### Deductions for savings

66. (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of the aggregate of the sums referred to in sub-section (2) as does not exceed three hundred thousand rupees.
- (2) The sums referred to in sub-section (1) shall be any sum paid to, or deposited in, any account maintained with any permitted savings intermediary, during the financial year.
- (3) The sums paid to, or deposited with, any account maintained with the permitted savings intermediary shall include any sums paid for, or on behalf of, the assessee.
- (4) The sums referred to in sub-section (2) shall not include any sum paid to, or deposited, in any account maintained with the permitted savings intermediary if the sum represents the roll over of any amount received, or withdrawn, from one account with the permitted savings intermediary to any other account with the same or any other permitted savings intermediary;
- (5) The payment to, or deposit with, the permitted savings intermediary shall be made in accordance with the scheme framed and prescribed by the Central Government in this behalf.

### Deductions in respect of children's education

67. (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum actually paid during the financial year, if the sum is-
- (a) paid as tuition fee to any university, college, school or other educational institution situated within India; and
- (b) for the purpose of full-time education of any two children of such individual or Hindu undivided family.
- (2) For the purposes of this section,-
- (a) tuition fee shall not include any payment towards any development fees or donation or payment of similar nature;
- (b) full time education shall include play schooling or pre-schooling.

### Deduction in respect of interest on loan taken for higher education

68. (1) A person, being an individual, shall be allowed a deduction in respect of any amount actually paid by him in the financial year by way of interest on loan taken by him from any financial institution for the purpose of,-
- (a) pursuing his higher education; or
- (b) higher education of his relatives.
- (2) The deduction specified in sub-section (1) shall be allowed in respect of the initial financial year and seven financial years immediately succeeding the initial financial year or until the interest referred to in sub-section (1) is paid by the person in full, whichever is earlier.
- (3) For the purposes of this section,-
- (a) "**financial institution**" means a banking company or any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf;
- (b) "**higher education**" means any course of study pursued after passing the senior secondary examination, or its equivalent, conducted by any board, or university, recognised by the Central or State Government or local authority or by any other authority authorised by the Government or local authority to do so;

- (c) "initial financial year" means the financial year in which the person begins to pay the interest on the loan; and
- (d) "relative" means,-
  - (i) the spouse of the individual;
  - (ii) the child of the individual; or
  - (iii) the student for whom the individual is the legal guardian.

### Deduction in respect of health insurance premia

- 69.** (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum actually paid during the financial year to effect, or to keep in force, an insurance on the health of any specified person.
- (2) The amount of deduction under sub-section (1) shall not exceed in the aggregate -
- (a) twenty thousand rupees, if the amount is paid in respect of a specified person, who is a senior citizen; and
  - (b) fifteen thousand rupees, in any other case.
- (3) A person, being an individual, shall be allowed a further deduction in respect of any sum actually paid during the financial year to effect, or to keep in force, an insurance on the health of any of his parents.
- (4) The amount of deduction under sub-section (3) shall not exceed in the aggregate -
- (a) twenty thousand rupees, if the amount is paid in respect of any of the parents, who is a senior citizen; and
  - (b) fifteen thousand rupees, in any other case.
- (5) The insurance referred to in this section shall be in accordance with a health insurance scheme framed in this behalf by any insurer and approved by the Insurance Regulatory and Development Authority.
- (6) For the purposes of this section, "specified person" means,-
- (a) the individual;
  - (b) the spouse;
  - (c) any dependant child of the individual; and
  - (d) any member of the Hindu undivided family.

### Deduction in respect of medical treatment, etc.

- 70.** (1) An individual shall be allowed a deduction in respect of any amount actually paid during the financial year for medical treatment of the prescribed disease or ailment of any specified person.
- (2) The amount of deduction under sub-section (1) shall not exceed in the aggregate -
- (a) sixty thousand rupees, if the amount is paid in respect of any specified person, who is a senior citizen; and
  - (b) forty thousand rupees, in any other case.
- (3) The deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer for the medical treatment of the specified person.
- (4) The deduction under this section shall not be allowed unless the person obtains a certificate in the prescribed form from a prescribed specialist working in a Government hospital.
- (5) For the purposes of this section,-
- (a) "specified person" means,-
    - (i) the individual,
    - (ii) the spouse;
    - (iii) any dependant child of the individual;

- (iv) any of the dependant parents of the individual; and
- (v) any member of the Hindu undivided family; and
- (b) **"Government hospital"** includes,-
  - (i) a dispensary established and run by a department of the Government for the medical treatment of Government employees and members of their family;
  - (ii) a hospital maintained by a local authority; and
  - (iii) any other hospital with which an agreement has been entered into by the Government for the treatment of its employees.

### Deduction in respect of maintenance of a disabled dependant

- 71.** (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of -
- (a) any expenditure incurred during the financial year for the medical treatment, nursing or training and rehabilitation of a disabled dependant; or
  - (b) any amount actually paid or deposited during the financial year under a scheme framed by any insurer and approved by the Board in this behalf, for the maintenance of a disabled dependant.
- (2) The amount of deduction under sub-section (1) shall not exceed in the aggregate -
- (a) one hundred thousand rupees, if the dependant is a person with severe disability; and
  - (b) fifty thousand rupees, in any other case.
- (3) The deduction in respect of the amount referred to in clause (b) of sub-section (1) shall be allowed, if the scheme referred to therein provides for payment of annuity or lump sum amount for the benefit of the disabled dependant in the event of the death of the individual.
- (4) The person, claiming a deduction under this section, shall obtain a certificate issued by the medical authority in the prescribed form and manner.
- (5) The deduction under this section shall be allowed during the period of validity of the certificate referred to in sub-section (4).
- (6) The amount received by the person under the scheme referred to in clause (b) of sub-section (1) upon the disabled dependant predeceasing him shall be deemed to be the income of the person for the financial year in which the amount is received by him.
- (7) For the purposes of this section,-
- (a) **"dependant"** means the spouse, any child or any parent of the individual, or any member of the Hindu undivided family, if,-
    - (i) he is mainly dependant on such individual, or Hindu undivided family, for his support and maintenance; and
    - (ii) his annual income is less than twenty-four thousand rupees;
  - (b) **"disabled dependant"** means a dependant who is referred to as person in,-
    - (i) clause (t) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or
    - (ii) clause (j) of section 2 of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

### Deduction in respect of donations to certain funds, non-profit organisations, etc.

- 72.** (1) A person shall be allowed a deduction of -

- (a) one and one-fourth times of the amount of money actually paid by him in the financial year as donation to any person specified in Part-A of the Sixteenth Schedule;
  - (b) hundred per cent. of the amount of money actually paid by him in the financial year as donation to any person specified in Part-B of the Sixteenth Schedule;
  - (c) fifty per cent of the aggregate of the amount of money actually paid by him in the financial year as donation to any person specified in Part-C of the Sixteenth Schedule.
- (2) The aggregate of the amount of money referred to in clause (c) of sub-section (1) shall be limited to ten per cent of the gross total income, if the aggregate exceeds ten per cent of the gross total income.
  - (3) The deduction under this section shall not be allowed in respect of any amount of money paid to any person referred to in sub-section (1) if,-
    - (a) the amount is laid out or expended during the financial year for any religious activity; or
    - (b) any activity of the donee is intended for, or actually benefit, any particular caste, not being a Scheduled Caste or Scheduled Tribe.
  - (4) The donation to any person specified in Part-C of the Sixteenth Schedule shall be eligible for deduction under sub-section (1), if the donee obtains the approval of the prescribed authority in accordance with the procedure and subject to such conditions, as may be prescribed.
  - (5) The deduction under sub-section (1) shall not be denied to a donor merely on the consideration that, subsequent to the donation, the donee, being a non-profit organisation, has ceased to be so.

### Deduction in respect of political contributions

73. (1) A person shall be allowed a deduction in respect of any contribution made by him in the financial year to any political party or electoral trust.
- (2) The deduction under sub-section (1) shall not exceed five per cent of,-
  - (a) the average of the net profit determined in accordance with the provisions of section 349 and section 350 of the Companies Act during the three immediately preceding financial years, in the case of a company; and
  - (b) the '**gross total income from ordinary sources**', in any other case.
- (3) For the purposes of this section, the word "**contribution**", with its grammatical variation, shall have the meaning assigned to it under section 293A of the Companies Act, 1956.

### Deduction in respect of interest income on bonds

74. (1) A person shall be allowed a deduction of the amount specified in sub-section (2), if the amount is included in the '**gross total income from ordinary sources**'.
- (2) The amount referred to in sub-section (1) shall be the income by way of interest on bonds -
  - (a) issued by a local authority or a State Pooled Finance Entity; and
  - (b) notified by the Central Government.
- (3) The income referred to in sub-section (2) shall be the gross interest on the bonds as reduced by the expenses incurred for earning the interest.
- (4) The expenses referred to in sub-section (3) shall be determined in accordance with the method prescribed under clause (a) of sub-section (1) of section 17.

### **Deduction in respect of income of Investor Protection Fund**

75. (1) A person shall be allowed in the financial year a deduction of the amount specified in sub-section (2), if such amount is included in the gross total income from ordinary sources.
- (2) The amount referred to in sub-section (1) shall be the contribution received from any recognised stock exchange, or recognised commodity exchange, and the members thereof.
- (3) The deduction under sub-section (1) shall be allowed if -
- (a) the person is a Investor Protection Fund set up, either jointly or separately, by recognised stock exchanges or recognised commodity exchanges; and
  - (b) the Fund is notified by the Central Government.

### **Deduction in respect of certain income of trade unions**

76. (1) A person shall be allowed a deduction of the amount specified in sub-section (2), if such amount is included in the 'gross total income from ordinary sources'.
- (2) The amount referred to in sub-section (1) shall be the income chargeable under the heads "**Income from house property**" and "**Income from other sources**".
- (3) The deduction under sub-section (1) shall be allowed if the person is -
- (a) a registered union within the meaning of the Trade Unions Act, 1926; or
  - (b) an association of registered unions referred to in sub-clause (a).

### **Deduction in respect of royalty income, etc., of authors of certain books**

77. (1) A person shall be allowed a deduction of an amount specified in sub-section (4) in respect of any income referred to in sub-section (3), if such income is included in his 'gross total income from ordinary sources'.
- (2) The deduction under sub-section (1) shall be allowed to a person, if he-
- (a) is a resident individual; and
  - (b) is an author of,-
    - (i) any book which is a work of literary, artistic or scientific nature; or
    - (ii) any other book certified as text-book by a prescribed authority.
- (3) The income referred to in sub-section (1) shall be any income, derived by the person in the exercise of his profession, by way of -
- (a) lump-sum consideration for the assignment or grant of any of his interest in the copyright of the book referred to in sub-section (2); or
  - (b) royalty or copyright fees (whether receivable in lump-sum or otherwise) in respect of the book referred to in sub-section (2).
- (4) The amount of deduction under sub-section (1) shall be the amount of income referred to in sub-section (3) to the extent it does not exceed three hundred thousand rupees.
- (5) For the purposes of this section, "**books**" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, tracts and other publications of similar nature by whatever name called.

### **Deduction in respect of royalty on patents**

78. (1) A person shall be allowed a deduction of an amount specified in sub-section (4) in respect of any income referred to in sub-section (3), if such income is included in his 'gross total income from ordinary sources'.
- (2) The deduction under sub-section (1) shall be allowed to a person, if he is a resident individual and a patentee.

- (3) The income referred to in sub-section (1) shall be any income received by the person by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970.
- (4) The amount of deduction under sub-section (1) shall be the amount of income referred to in sub-section (3) to the extent it does not exceed,-
  - (a) the amount of royalty allowable under the terms and conditions of a license settled by the Controller under the Patents Act, 1970, if a compulsory licence is granted in respect of any patent under that Act; and
  - (b) three hundred thousand rupees.

#### **Deduction in case of a person with disability**

79. (1) A person shall be allowed a deduction of an amount specified in sub-section (2) subject to the conditions specified in sub-section (3).
- (2) The amount of deduction under sub-section (1) shall be -
  - (a) one hundred thousand rupees, if he is a person with severe disability; and
  - (b) fifty thousand rupees, if he is a person with disability.
- (3) The deduction under sub-section (1) shall be allowed, if the person -
  - (a) is a resident individual; and
  - (b) obtains a certificate from a medical authority in the prescribed form and manner.
- (4) The deduction under this section shall be allowed during the period of validity of the certificate referred to in sub-section (3).

#### **Deduction in respect of income of co-operative society from banking activities**

80. (1) A person, being a primary co-operative society, shall be allowed a deduction to the extent of profits derived from the business of providing banking, or credit, facility to its members.
- (2) For the purposes of this section 'primary co-operative society' means,-
  - (a) a 'primary agricultural credit society' within the meaning of Part V of the Banking Regulation Act, 1949; or
  - (b) a "primary co-operative agricultural and rural development bank", which-
    - (i) has its area of operation confined to a taluk; and
    - (ii) is mainly engaged in providing long-term credit for agricultural and rural development activities.

#### **Deduction in respect of income of primary co-operative societies**

81. (1) A person, being a primary co-operative society, shall be allowed a deduction in respect of the aggregate of the amounts referred to in sub-section (2).
- (2) The amount referred to in sub-section (1) shall be-
  - (a) the amount of profits derived from agriculture or agriculture-related activity; and
  - (b) the amount of income derived from any other activity, to the extent it does not exceed one hundred thousand rupees.
- (3) For the purposes of this section,-
  - (a) "agriculture-related activities" means the following activities, namely:-
    - (i) purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members;
    - (ii) the collective disposal of,-
      - (A) agricultural produce grown by its members; or
      - (B) dairy or poultry produce of its members; and
    - (iii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of material and

equipment in connection therewith for the purpose of supplying them to its members;

- (b) "**primary co-operative society**" means a co-operative society whose rules and byelaws restrict the voting rights to individuals engaged in agriculture or agricultural-related activities.

### **Expenditure for promoting family planning and preventing HIV-aids**

82. A company shall be allowed a deduction of an amount equal to the expenditure incurred for the purposes of,-
- (a) promoting family planning amongst its employees; or
  - (b) preventing HIV-aids amongst its employees.

## **I. - Maintenance of accounts and other related matters**

### **Maintenance of accounts**

83. (1) Every person shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Code.
- (2) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.
- (3) The person referred to in sub-section (1) shall be the following:-
- (a) any person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board in the Official Gazette;
  - (b) any other person carrying on business, if,-
    - (i) his income from the business exceeds two lakh rupees;
    - (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or
    - (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year.
- (4) The books of accounts referred to in sub-section (1) shall be the following, namely,-
- (a) a cash book;
  - (b) a journal, if the accounts are maintained according to the mercantile system of accounting;
  - (c) a ledger;
  - (d) register of daily inventory of business trading asset;
  - (e) carbon copies of serially numbered bills issued by the person, if the value of the bill exceeds fifty rupees;
  - (f) carbon copies or counterfoils of serially numbered receipts issued by the person, if the value of the bill exceeds fifty rupees;
  - (g) original bills or receipts issued to the person in respect of expenditure incurred by him, if the amount of the expenditure exceeds fifty rupees;
  - (h) payment vouchers prepared and signed by the person in respect of expenditure not exceeding fifty rupees, if there are no bills or receipts for such expenditure.
- (5) The bills or receipts issued to any person shall contain the name, address and such other particulars as may be prescribed.



- (6) The Board may, having regard to the nature of the business carried on by any class of persons, prescribe-
  - (a) any other books of accounts and documents to be kept and maintained;
  - (b) the particulars to be contained in the books of accounts and documents; and
  - (c) the form and the manner in, and the place at, which the books of accounts and other documents shall be kept and maintained.
- (7) The Board may prescribe the period for which the books of account and other documents to be kept and maintained under this section shall be retained.

### Tax audit

- 84.** Every person, who is required to keep and maintain books of accounts under section 83 shall get his accounts for the financial year audited if,-
- (a) in a case where the person is carrying on any profession, the gross receipts of the profession exceed ten lakh rupees in the financial year; and
  - (b) in a case where the person is carrying on any business, the total turnover or gross receipts, as the case may be, of the business exceed forty lakh rupees in the financial year.
- (2) The audit of the accounts referred to in sub-section (1) shall be performed by an accountant and the report of audit obtained before the due date.
  - (3) The report of audit referred to in sub-section (2) shall be obtained in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.
  - (4) The provisions of sub-section (1) shall not apply to the business where the income there from is determined under Rule 1 of Table of the Fourteenth Schedule.
  - (5) A person shall be deemed to have complied with the provisions of sub-section (1), if the person -
    - (a) gets the accounts of his business audited as required by, or under, any other law before the due date; and
    - (b) obtains by the due date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under sub-section (3).

### Method of accounting

- 85.** (1) Income chargeable under the head "Income from business" or "Income from other sources" shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the person.
- (2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of person or in respect of any class of income.
  - (3) The valuation of purchase and inventory for the purposes of determining the income chargeable under the head "Income from business" shall, regardless of anything to the contrary contained in sub-section (1), be-
    - (a) in accordance with the method of accounting regularly employed by the person; and
    - (b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.
  - (4) The value of sale of goods for the purposes of determining the income chargeable under the head "Income from business" shall, regardless of anything to the contrary contained in sub-section (1), be determined-
    - (a) in accordance with the method of accounting regularly employed by the assessee; and



- (b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) leviable on the sale of the goods.
- (5) The interest on bad or doubtful debts of any permitted financial institution shall, regardless of anything to the contrary contained in the foregoing provisions, be included in the total income for the earlier of,-
  - (a) the financial year in which the interest is credited to the profit and loss account of the permitted financial institution; and
  - (b) the financial year in which the interest is actually received by the permitted financial institution.
- (6) The interest received by a person on compensation, or an enhanced compensation, shall, regardless of anything to the contrary contained in sub-section (1), be included in the total income of the financial year in which it is received.
- (7) For the purposes of this section,-
  - (a) any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment regardless of any right arising as a consequence to such payment;
  - (b) 'bad or doubtful debts' shall be the debts as may be prescribed, having regard to the guidelines issued by the Reserve Bank of India or the National Housing Bank, as the case may be, in relation to the debts.

## CHAPTER - IV

### SPECIAL PROVISIONS RELATING TO COMPUTATION OF TOTAL INCOME OF NON-PROFIT ORGANISATIONS

#### Applicability of this Chapter

86. The provisions of this Chapter shall be applicable to a non-profit organisation.

#### Total income of a non-profit organisation

87. The total income of any non-profit organisation shall be computed in accordance with the provisions of this Chapter.

#### Computation of total income of a non-profit organisation

88. (1) Subject to the provisions of this Chapter, the total income of any non-profit organisation shall be the aggregate of the following, namely :-
- (a) income from permitted welfare activities; and
  - (b) any income arising from the transfer of any investment asset being a financial asset.
- (2) The income from any permitted welfare activities referred to in clause (a) of sub-section (1) shall be the gross receipts, during the financial year, from the permitted welfare activities as reduced by the amount of outgoings in relation to the activities, calculated in accordance with the cash system of accounting.
- (3) The income referred to in clause (b) of sub-section (1) shall be computed in accordance with the provisions of sections 44 to 53.

#### Gross receipts in the case of a non-profit organisation

89. (1) The gross receipts from the permitted welfare activities referred to in sub-section (2) of section 88 shall be the aggregate of the following, namely:-
- (a) the amount of voluntary contributions received;
  - (b) any rent received in respect of a property consisting of any buildings or lands appurtenant thereto;

- (c) the amount of income derived from any business carried on by it, if-
    - (i) the business is incidental to the permitted welfare activity so carried on; and
    - (ii) the permitted welfare activity so carried on does not involve any activity referred to in sub-clause (vi) of clause (g) of section 96;
  - (d) full value of the consideration received from the transfer of any investment asset, not being a financial asset;
  - (e) full value of the consideration received from the transfer of any business capital asset, if-
    - (i) the business is incidental to the permitted welfare activity carried on by it; and
    - (ii) the permitted welfare activity so carried on does not involve any activity referred to in sub-clause (vi) of clause (g) of section 96;
  - (f) the amount of any income received from any investment of its funds or assets; and
  - (g) the amount of any incoming, realization, proceed, donation or subscription, received from any source.
- (2) The gross receipts referred to in sub-section (1) shall not include,-
- (a) any loan, borrowings and advances during the financial year; and
  - (b) any receipt which is includible in clause (b) of sub-section (1) of section 88.

#### Outgoings in the case of a non-profit organisation

90. The amount of outgoings referred to in section 88 shall be the aggregate of -
- (a) voluntary contributions received during the financial year by the non-profit organisation made with a specific direction that they shall form part of the corpus of the non-profit organisation.
  - (b) the amount actually paid during the financial year for any expenditure, not being a capital expenditure, incurred wholly and exclusively for earning or obtaining any receipts referred to in section 95;
  - (c) the amount actually paid during the financial year for any expenditure, not being a capital expenditure, incurred for the purposes of carrying out the permitted welfare activity;
  - (d) the amount actually paid during the financial year for any capital expenditure for the purposes of any business, if-
    - (i) the business is incidental to the permitted welfare activity carried on by it; and
    - (ii) the permitted welfare activity so carried on does not involve any activity referred to in sub-clause (vi) of clause (g) of section 96;
  - (e) the amount actually paid during the financial year for any capital expenditure in relation to any investment asset, not being a financial asset;
  - (f) any amount, other than any loan or advance, actually paid during the financial year to any other non-profit organisation engaged in similar permitted welfare activity; and
  - (g) any amount applied outside India during the financial year, if-
    - (i) the amount is applied for an activity which tends to promote international welfare in which India is interested; and
    - (ii) the non-profit organisation is notified by the Central Government in this behalf.

**Prohibited forms and modes of investment**

91. (1) The forms and modes of investment referred to in sub-clause (xi) of clause (d) of section 96 shall be the following, namely:-
- (a) investment in the capital or equity, as the case may be, of an associated concern;
  - (b) investment in any bond, debenture or any other debt instrument issued by an associated concern;
  - (c) deposit with an associated concern; and
  - (d) any other form or modes of investment as may be prescribed.

**Deemed use or application of funds or assets for the benefit of interested person**

92. The funds or the assets of the non-profit organisation shall be deemed to have been used or applied for the benefit of an interested person, if -
- (a) the funds or the assets of the non-profit organisation are, or continue to be, lent to any interested person, for any period during the financial year without either adequate security or adequate interest or both; or
  - (b) the land, building or other asset of the non-profit organisation is, or continues to be, made available for the use of any interested person, for any period during the financial year without charging adequate rent or other compensation; or
  - (c) any amount is paid by way of salary, allowance or otherwise during the financial year to any interested person, out of the resources of the non-profit organisation for services rendered by that person to such organisation and the amount so paid is in excess of what may be reasonably paid for such services; or
  - (d) the services of the non-profit organisation are made available to any interested person, during the financial year without adequate remuneration or other compensation; or
  - (e) any share, security or other property is purchased by or on behalf of the non-profit organisation from any interested person, during the financial year for consideration which is more than adequate; or
  - (f) any share, security or other property is sold by or on behalf of the non-profit organisation to any interested person, during the financial year for consideration which is less than adequate; or
  - (g) any funds or property of the non-profit organisation, is diverted during the financial year in favour of any interested person where the income or the value of property or, as the case may be, the aggregate of the income and the value of the property exceeds one thousand rupees; or
  - (h) any funds of the non-profit organisation are, or continue to remain, invested for any period during the financial year, in any concern in which any interested person has a substantial interest and such investment exceeds five per cent. of the capital of that concern provided that the investment is in one of the forms specified in section; or
  - (i) any income in the nature referred to in section 9 is included in the total income of the organisation.

**Registration of the non-profit organisation**

93. (1) A non-profit organisation shall make an application for its registration in the prescribed manner to the Chief Commissioner or Commissioner.
- (2) The Chief Commissioner or Commissioner, on receipt of the application for registration of a non-profit organisation made under sub-section (1) may call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the objects of the non-profit organisation and may also make such inquiries as he may deem necessary in this behalf.

- (3) The Chief Commissioner or Commissioner shall pass an order in writing,-
  - (a) registering the non-profit organisation if he is satisfied about its objects; or
  - (b) refusing to register the non-profit organisation if he is not satisfied about its objects or any of the terms of the instrument creating it are inconsistent with sub-clauses (i) to (iv) of the clause (d) of section 96.
- (4) The order under sub-section (3) shall be passed within three months from the end of the month in which the application under section (1) was received.
- (5) The registration granted under sub-section (3) shall be valid from the financial year in which application under sub-section (1) was made.

### Consequences of conversion of a non-profit organisation

94. (1) A non-profit organisation shall be liable to income tax at the rate of thirty per cent. in respect of its net worth if,-
  - (a) it converts into any form of organisation which does not qualify as a non-profit organisation; or
  - (b) it ceases to be a non-profit organisation in the financial year and any two financial years out of four financial years immediately preceeding the relevant financial year;
  - (c) fails to transfer, upon its dissolution, all its assets to any other non-profit organisation.
- (2) For the purposes of this section,-
  - (a) net worth shall be computed as on,-
    - (i) the date of conversion of the non-profit organisation in a case falling under clause (a) of sub-section (1);and
    - (ii) the last day of the financial year in a case falling under clause (b) of sub-section (1);
  - (b) net worth means the aggregate value of the total assets of the non-profit organisation as reduced by the value of liabilities of the organisation;
  - (c) the value of the total assets and liabilities shall be computed in accordance with the rules of valuation prescribed in this behalf.

### Provisions of this chapter not to apply in certain cases

95. The provisions of this Chapter shall not apply to any person who-
  - (a) holds any business under trust, regardless of any specific direction that-
    - (i) the business shall form part of the corpus of such person; or
    - (ii) the income from the business shall be applied only for permitted welfare activity;
  - (b) carries on any business if-
    - (i) the business is not incidental to the permitted welfare activity carried on by it; and
    - (ii) the permitted welfare activity so carried on does not involve any activity referred to in sub-clause (vi) of clause (g) of section 96; or
  - (c) ceases to be a non-profit organisation at any time during the financial year.

### Interpretations

96. In this Chapter, unless the context otherwise requires,
  - (a) **a business shall be incidental to the permitted welfare activity** if the business is carried on in the course of the actual carrying out of the permitted welfare activity;
  - (b) **“advancement of any other object of general public utility”** shall not be a permitted welfare activity if it involves the carrying on of any activity in the

nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess, fee or any other consideration, irrespective of nature of use, application or retention, of the income from such activity;

- (c) **“associated concern”** shall have the meaning assigned to ‘associated enterprises’ in section 113, with the modification that for the word ‘enterprise’ with all its grammatical variation, the word ‘concern’ with its corresponding grammatical variation shall be substituted;
- (d) **"non-profit organisation"** means an organisation, by whatever name called, including a trust, if -
- (i) it is established for the benefit of the general public;
  - (ii) it is established for carrying on permitted welfare activities;
  - (iii) it is not established for the benefit of any particular caste;
  - (iv) it is not established for the benefit of any of its members;
  - (v) it actually carries on the permitted welfare activities during the financial year;
  - (vi) the actual beneficiaries of its activities are the general public;
  - (vii) it does not intend to apply its surplus or other income or use its assets or incur expenditure, directly or indirectly, for the benefit of any interested person;
  - (viii) any expenditure by the organisation does not enure, directly or indirectly, for the benefit of any interested person;
  - (ix) the funds or assets of the organisation are not used or applied or deemed to have been used or applied, directly or indirectly, for the benefit of interested person;
  - (x) the surplus, if any, accruing from its permitted activities does not enure, directly or indirectly, for the benefit of any interested person;
  - (xi) the funds or the assets of the non-profit organisation are not invested or held, at any time during the financial year, in any of the forms or modes specified in section 91;
  - (xii) it maintains such books of accounts and in the manner, as may be prescribed;
  - (xiii) it is registered as such under section 93; and
  - (xiv) it obtains a report of audit in prescribed form from an accountant before due date of filing of the return in respect of,-
    - (A) the accounts of business, if any, carried on by it in accordance with the provisions of section 84; and
    - (B) its accounts relating to the permitted welfare activities in a case where the gross receipts referred to in section 89 exceeds one lakh fifty thousand rupees;
- (e) **"general public"** means the body of unascertained persons sufficiently defined by some common quality of public or impersonal nature;
- (f) **"interested person"** in relation to a non-profit organisation means,-
- (i) the founder of the organisation or the author of the trust;
  - (ii) any person whose total contribution to the organisation up to the end of the relevant financial year exceeds fifty thousand rupees;
  - (iii) a member of the Hindu undivided family if the author or founder or person is the family;
  - (iv) any manager, by whatever name called, of the organisation or trustee of the trust;
  - (v) any relative of the author, founder, member, trustee or manager;

- (vi) any concern in which any of the persons referred to in clauses (i) to (v) has a substantial interest;
- (g) **"permitted welfare activity"** means any activity,-
  - (i) involving the relief of the poor;
  - (ii) for the advancement of education;
  - (iii) for providing medical relief;
  - (iv) for the preservation of environment (including watersheds, forests and wildlife;
  - (v) for the preservation of monuments or places or objects of artistic or historic interest; or
  - (vi) for the advancement of any other object of general public utility;
- (h) **"trust"** includes any legal obligation.

## **CHAPTER - V**

### **COMPUTATION OF THE VALUE OF GROSS ASSETS**

#### **Computation of the value of gross assets**

97. (1) The value of gross assets referred to in Paragraph A of The Second Schedule shall, subject to the provisions of this Chapter, be computed in accordance with the formula -

$$A+B+C-D-E$$

- Where
- A = the value of the gross block of fixed assets of the company as on the close of the financial year;
  - B = the value of the capital work in progress of the company as on the close of the financial year;
  - C = the book value of all other assets of the company as on the close of the financial year;
  - D = the accumulated depreciation on the value of the gross block of fixed assets, claimed up to the last day of the relevant financial year;
  - E = the amount of debit balance of profit and loss account, if included in the amount 'C'.

#### **Preparation of balance sheet for computing gross assets**

98. (1) Every company shall, for the purposes of section 97, prepare his balance sheet for the relevant financial year in accordance with the provisions of Part I of Schedule VI to the Companies Act, 1956.
- (2) The company shall, for the purposes of preparing the balance sheet referred to in sub-section (1), adopt the same accounting policies, the accounting standards adopted for preparing its accounts including profit and loss account and the method and rates adopted for calculating the depreciation as have been adopted for the purpose of preparing the accounts-
- (a) laid by the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956; or
  - (b) delivered to the Registrar under section 594 of the Companies Act, 1956.
- (3) The company shall, in a case where the financial year adopted under the Companies Act, 1956 is different from the financial year under this Code, adopt the same

accounting policies, the accounting standards adopted for preparing its accounts including profit and loss account and the method and rates adopted for calculating the depreciation as have been adopted for preparing the accounts for such financial year or part of such financial year falling within the relevant financial year.

- (4) Every other person, in respect of whom the foregoing provisions of this section does not apply, shall also prepare its balance sheet and profit and loss account as if the foregoing provisions of this section apply.
- (5) The Board may prescribe such rules, as may be necessary, to modify the provisions of sub-sections (1) to (3) for the purposes of enabling the preparation of the balance sheet and profit and loss account under sub-section (4).

**PART - B**  
**DIVIDEND DISTRIBUTION TAX**

**CHAPTER - VI**  
**SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME**

**Tax on dividends distributed**

99. (1) Subject to the provisions of this Code, every domestic company shall be liable to dividend distribution tax, at the rate specified in Paragraph B of The Second Schedule and in the manner provided therein, on any amount declared by the company by way of dividends.
- (2) The amount referred to in sub-section (1) shall be reduced by,-
  - (a) the amount of dividend, if any, received by the domestic company during the financial year, if-
    - (i) such dividend is received from its subsidiary;
    - (ii) the subsidiary has paid tax under this section on such dividend; and
    - (iii) the domestic company is not a subsidiary of any other company; and
  - (b) the amount of dividend, if any paid to-
    - (i) any pass-thru entity; or
    - (ii) any person for, or on behalf of, the pass-thru entity.
- (3) The same amount of dividend, referred to in clause (a) of sub-section (2), shall not be taken into account for reducing the amount, referred to in sub-section (1), more than once.
- (4) The liability to dividend distribution tax shall be discharged by way of self-assessment or any other mode, as the case may be, in accordance with the provisions of this Code
- (5) Without prejudice to the foregoing and subject to the provisions of this Code, every domestic company may be charged in respect of its liability to dividend distribution tax referred to in sub-section (1).
- (6) The dividend distribution tax charged under the foregoing provisions shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.
- (7) For the purposes of this sub-section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

**PART - C**  
**BRANCH PROFITS TAX**

**CHAPTER - VII**  
**CHARGE OF BRANCH PROFITS TAX**

**Tax on branch profits**

- 100.** (1) Subject to the provisions of this Code, every foreign company shall be liable to branch profits tax, at the rate specified in Paragraph C of The Second Schedule, on its branch profits.
- (2) The branch profits referred to in sub-section (1) shall be the total income for the financial year as reduced by the amount of income tax thereon.
- (3) The liability to branch profits tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code as if the branch profits tax was income-tax.
- (4) Without prejudice to the foregoing and subject to the provisions of this Code, every foreign company may be charged in respect of its liability to branch profits tax referred to in sub-section (1).
- (5) The branch profits tax charged under the foregoing provisions shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

**PART - D**  
**WEALTH-TAX**

**CHAPTER - VIII**  
**CHARGE OF WEALTH-TAX**

**Charge of wealth-tax**

- 101.** (1) Subject to the provisions of this Code, every individual, Hindu undivided family and private discretionary trust shall be liable to wealth-tax on the net wealth on the valuation date in the financial year at the rate specified in Paragraph D of The Second Schedule.
- (2) The liability to wealth-tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code.
- (3) Without prejudice to the foregoing and subject to the provisions of this Code, every individual, Hindu undivided family and private discretionary trust may be charged in respect of his liability to wealth-tax referred to in sub-section (1).
- (4) The wealth-tax charged under the foregoing provisions shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

**Computation of net wealth**

- 102.** (1) The net wealth of a person shall be the amount computed in accordance with the formula -  
A-B  
Where A = the aggregate of the value on the valuation date, of all the assets, wherever located, belonging to the person, computed in accordance with the provisions of sub-section (3);  
B = the aggregate of the value on the valuation date, of all the debts, owed by the person, which have been incurred in relation to the said assets.



- (2) The assets referred to in sub-section (1) shall not include the following:-
- (a) any property held by the person under trust, or other legal obligation, for carrying out any permitted welfare activity in India;
  - (b) the interest of the person in the coparcenary property of any Hindu undivided family of which he is a member;
  - (c) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) order, 1949, or paragraph 15 of the Part-B States (Taxation Concessions) Order, 1950;
  - (d) jewellery in the possession of any Ruler, not being his personal property, which has been recognised as his heirloom,-
    - (i) by the Central Government before the commencement of this Code; or
    - (ii) by the Board at the time of his first assessment to wealth-tax under the Wealth-tax Act, 1957;
  - (e) the value of the assets located outside India if, during the financial year ending on the valuation date, the person is,-
    - (i) an individual who is not a citizen of India; or
    - (ii) an individual or a Hindu undivided family not resident in India; and
  - (f) any one house or part of a house or a plot of land belonging to an individual or a Hindu undivided family which is acquired or constructed before the 1st day of April, 2000.
- (3) The value of any asset, other than cash, referred to in sub-section (1), shall be determined in the prescribed manner.

### Net wealth to include certain assets

- 103.** (1) The following assets shall be deemed to be belonging to the person, being an individual, and included in computing his net wealth,-
- (a) the value of asset which on the valuation date are held (whether in the form they were transferred or otherwise) -
    - (i) by the spouse of such individual to whom such asset has been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart;
    - (ii) by a minor child, not being a not being a person with disability or person with severe disability, of such individual;
    - (iii) by a person to whom such asset has been transferred by the individual, directly or indirectly, otherwise than for adequate consideration for the immediate or deferred benefit of the spouse of the individual;
    - (iv) by a trust to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the beneficiary of the trust;
    - (v) by a person, not being a trust, to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the person;
  - (b) the value of any converted property;
  - (c) the value of his interest in the asset of an unincorporated body in which he is a participant, (to be included in definition of asset)
- (2) The provisions of sub-section (1) shall not apply in respect of such asset as has been acquired by the minor child out of his income referred to in sub-clause (i) and (ii) of clause (b) of sub-section (1) of section 8 and which are held by him on the valuation date.

- (3) For the purposes of this section,-
- (a) the asset referred to in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) shall be included in the net wealth of -
    - (i) the parent who is the guardian of the minor child, if the other parent is not a guardian; or
    - (ii) the parent whose net wealth (excluding the asset referred to in those sub-clauses) is higher, if both the parents are guardians of the child;
  - (b) a transfer shall be deemed to be revocable if,-
    - (i) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or asset to the transferor; or
    - (ii) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or asset;
  - (c) the person shall, regardless of anything to the contrary contained in this Code or any other law for the time being in force, be deemed to be the owner of a building or part thereof, if he is a member of a co-operative society, company or other association of persons and the building or part thereof is allotted or leased to him under a house building scheme of the society, company or association, as the case may be; and
  - (d) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.
  - (e) the value of any assets transferred under an irrevocable transfer shall be liable to be included in computing the net wealth of the transfer in the in which the power to revoke vests in him;

## **PART - E**

### **PREVENTION OF ABUSE OF THE CODE**

#### **CHAPTER - IX**

#### **SPECIAL PROVISIONS TO PREVENT EVASION**

##### **Disallowance of expenditure having regard to fair market value**

- 104.**(1) A person shall not be allowed a deduction under this Code in respect of so much of the expenditure, whether capital or revenue in nature, as is considered by the Assessing Officer to be excessive or unreasonable if,-
- (a) the payment in respect of the expenditure has been, or is to be, made to any **associated person**; and
  - (b) the expenditure is excessive, or unreasonable, having regard to,-
    - (i) the fair market value of the goods, services or facilities for which the payment is made;
    - (ii) the legitimate needs of the business of the person; or
    - (iii) the benefit derived by, or accruing to, the person therefrom.

##### **Computation of income from international transaction having regard to arm's length price**

- 105.**(1) The amount of any income, or expense, arising from an **international transaction** shall be determined having regard to the **arm's length price**.
- (2) The allocation or apportionment of, or any contribution to, any cost or expense incurred in connection with a benefit, service or facility provided to any **associated enterprise** shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be, if -
- (a) two or more associated enterprises have entered into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, such cost or expense; and

- (b) the benefit, service or facility provided to any one or more associated enterprises involves an international transaction.
- (3) The provisions of this section shall not apply in a case, if the determination under sub-section (1), or sub-section (2), has the effect of reducing the income chargeable to tax, or increasing the loss computed, on the basis of entries made in the books of account in respect of the financial year in which the international tax transaction was entered.

### Computation of arm's length price

- 106.**(1) The *arm's length price* in relation to an international transaction shall be determined by any of the prescribed methods, being the most appropriate method.
- (2) The most appropriate method referred to in sub-section (1) shall be determined in the prescribed manner, having regard to the nature of transaction, class of associated enterprises, functions performed by such enterprises or such other relevant factors.
  - (3) The most appropriate method determined under sub-section (2) shall be applied, for determination of arm's length price, in the prescribed manner.
  - (4) The arm's length price shall be -
    - (a) the price determined by the most appropriate method, if only one price is determined by the method; or
    - (b) the arithmetical mean of the prices determined by the most appropriate method, if more than one price is determined by the method.
  - (5) The price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price if the variation between the arm's length price determined under sub-section (4) and the price at which the international transaction has actually been undertaken does not exceed five per cent of the later.
  - (6) The income of an associated enterprise shall not be recomputed by reason of determination of arm's length price in the case of the other associated enterprise.
  - (7) No deduction under sub-chapter-I of Chapter III shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this section.
  - (8) The determination of arm's length price shall be subject to safe harbour rules, as may be framed by the Board in this behalf.

### Advance pricing agreement

- 107.**(1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person in respect of the arm's length price in relation to an international transaction which may be entered into by that person on the basis of the prescribed method being the most appropriate method.
- (2) The arm's length price referred to in sub-section (1) shall be determined by the Board in the manner provided in sub-sections (1) to (4) of section 106.
  - (3) However, the Board may make such other adjustments to the price determined under sub-section (2), as may be necessary or expedient to do so, to arrive at the arm's length price at which the advance pricing agreement may be entered into.
  - (4) The arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be the arm's length price in relation to the international transaction for the purposes of this Code, regardless of anything to the contrary contained in any other provision of this Code.
  - (5) The agreement referred to in sub-section (1) shall be valid for such financial years as specified in the agreement which in no case shall exceed five consecutive financial years.

- (6) The advance pricing agreement entered into shall be binding only -
  - (a) on the applicant in whose case the agreement has been entered into;
  - (b) in respect of the transaction in relation to which the agreement has been entered into; and
  - (c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the person and the said transaction.
- (7) However, the agreement referred to in sub-section (1) shall not be binding, if there is a change in law on the basis of which the agreement has been entered into.
- (8) The Board may, by order, declare an agreement to be void ab initio if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.
- (9) Upon declaring the agreement to be void ab initio, all the provisions of this Code shall, after excluding the period beginning with the date of such agreement and ending with the date of order under sub-section (8), apply to the person as if such agreement had never been entered into.
- (10) A copy of the order made under sub-section (8) shall be sent to the person and the Commissioner.
- (11) For the purposes of this section, the Board may frame a Scheme, by notification in the Official Gazette, so as to enable it to enter into advance pricing agreement in respect of an international transaction.

### Avoidance of income-tax by transactions resulting in transfer of income to non-residents

- 108.**(1) The total income of a person shall include all income accruing to any non-resident, if-
- (a) the income accrues by virtue of a transfer of any **asset** by the person, either alone or in conjunction with **associated operations**, directly or indirectly, to the non-resident;
  - (b) the person ,-
    - (i) acquires any rights by virtue of which he has power to enjoy, whether forthwith or in the future, such income; or
    - (ii) is entitled to receive, or has received, any capital sum, the payment whereof is in any way connected with the transfer or any associated operations; and
  - (c) the income would have been included in the total income of the person, had the transfer not taken place.
- (2) A person shall be deemed to have the power to enjoy the income of a non-resident, if-
- (a) the income is in fact so dealt with by the person so as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the person,
  - (b) the accrual or receipt of the income operates to increase the value to the person of any assets held by him or for his benefit,
  - (c) the person receives, or is entitled to receive, at any time any benefit provided, or to be provided, out of that income, or out of moneys, which are or will be available for the purpose by reason of the effect, or successive effects, of the associated operations on that income and assets which represent that income,
  - (d) such person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or

without the consent of any other person, the beneficial enjoyment of the income, or

- (e) the person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;
- (3) For the purposes of determining whether a person has power to enjoy the income, regard shall be had to -
  - (a) the substantial result and effect of the transfer and any associated operations; and
  - (b) all benefits which may at any time accrue to such person as a result of the transfer and any associated operations, irrespective of the nature or form of the benefits.
- (4) The provisions of this section shall not apply if the person referred to in sub-section (1) shows to the satisfaction of the Assessing Officer that the transfer and all associated operations were bonafide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

#### **Avoidance of tax by sale and buy-back transaction in security**

- 109.** The total income of any person shall include any interest accruing from any security owned by any other person if,-
- (a) the person undertakes a transaction relating to sale and buy back of the security;
  - (b) the interest accrues to the other person as a result of such transaction;
  - (c) the income would have been included in the total income of the person, had the transfer not taken place.

#### **Avoidance of tax by buy and sale-back transaction in security**

- 110.**(1) The transaction relating to buy and sale back of the security under section 69 shall, in the case of the other person referred to therein, be ignored and no account shall be taken of the transaction in computing the income if the interest accruing to the other person is not included in his total income by virtue of the provisions of that section.
- (2) The loss, if any, arising to a person on account of any buy and sale back transaction in any security undertaken by him, shall be ignored for the purposes of computing his total income, if any other income accruing to the person on such security is not included in his total income.
  - (3) The loss, referred to in sub-section (2), shall be ignored to the extent such loss does not exceed the amount of any other income referred to therein.

#### **Broken-period income accruing from a debt instrument**

- 111.** The income accruing from a debt instrument, transferred by a person at any time during the financial year, shall not be less than the amount of **broken-period income** from the instrument.

#### **General anti-avoidance rule**

- 112.** (1) Any arrangement entered into by a person may be declared as an impermissible avoidance arrangement and the consequences, under this Code, of the arrangement may be determined by,-
- (a) disregarding, combining or re-characterising any step in, or a part or whole of, the impermissible avoidance arrangement;
  - (b) treating the impermissible avoidance arrangement-
    - (i) as if it had not been entered into or carried out; or

- (ii) in such other manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit.
  - (c) treating parties who are connected persons in relation to each other as one and the same person; or
  - (d) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
  - (e) deeming persons who are connected persons in relation to each other to be one and the same person;
  - (f) re-allocating, amongst the parties to the arrangement,-
    - (i) any accrual, or receipt, of a capital or revenue nature; or
    - (ii) any expenditure, deduction, relief or rebate;
  - (g) re-characterising-
    - (i) any equity into debt or vice-versa;
    - (ii) any accrual, or receipt, of a capital or revenue nature; or
    - (iii) any expenditure, deduction, relief or rebate;
- (2) The provisions of this section may be applied in the alternative for, or in addition to, any other basis for making an assessment.

### Interpretation

113. For the purposes of this part, -

- (1) **“accommodating party”** means a party to an arrangement who, as a direct or indirect result of his participation, derives any amount in connection with the arrangement, which would,-
  - (a) be included in his total income which would have otherwise been included in the total income of another party;
  - (b) not be included in his total income which would have otherwise been included in the total income of another party;
  - (c) be treated as a deductible expenditure, or allowable loss, by the party which would have otherwise constituted a non-deductible expenditure, or non-allowable loss, in the hands of another party; or
  - (d) result in prepayment by any other party;
- (2) **“arm’s length price”** means a price which is applied, or proposed to be applied, in a transaction between persons, *enterprises* or undertakings, other than associated enterprises, in uncontrolled, unrelated or independent conditions;
- (3) **“arrangement”** means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes any of the foregoing involving the alienation of property;
- (4) **“asset”** includes property, or right, of any kind;
- (5) **“associated enterprises”** means two enterprises which are associated with each other at any time during the financial year, by virtue of -
  - (a) one enterprise holding, directly or indirectly, shares carrying ten per cent., or more, of the voting power in the other enterprise;
  - (b) any person or enterprise holding, directly or indirectly, shares carrying ten per cent., or more, of the voting power in each of such enterprises;
  - (c) a loan advanced by one enterprise to the other enterprise and the loan constitutes twenty-six per cent, or more, of the book value of the total assets of the other enterprise;

- (d) one enterprise guaranting ten per cent, or more, of the total borrowings of the other enterprise;
  - (e) more than one-third of the board of directors, or members, of the governing board, or one or more executive directors, or executive members, of the governing board of one enterprise, being appointed by the other enterprise;
  - (f) more than one-third of the directors, or members, of the governing board, or one or more of the executive directors, or executive members, of the governing board, of each of the two enterprises, being appointed by the same person or persons;
  - (g) the manufacture, or processing, of any goods or articles of, or carrying on the business by, one enterprise being wholly dependent on the use of know-how, patents, copyrights, trade-marks, brands, licences, franchises, or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights;
  - (h) two-third, or more, of the raw materials and consumables required for the manufacture, or processing, of goods or articles carried out by one enterprise, being supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise;
  - (i) the goods or articles manufactured, or processed, by one enterprise, being sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise;
  - (j) one enterprise being controlled by an individual, and the other enterprise being also controlled by such individual or his relative, or jointly by such individual and his relative;
  - (k) one enterprise being controlled by a Hindu undivided family, and the other enterprise being also controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative;
  - (l) one enterprise holding ten per cent., or more, interest in another enterprise being an unincorporated body; or
  - (m) there existing between the two enterprises, any relationship of mutual interest, as may be prescribed;
- (6) **"associated operation"** in relation to any transfer means an operation of any kind effected by the transferor in relation to-
- (a) any asset transferred;
  - (b) any asset representing, directly or indirectly, any asset so transferred;
  - (c) the income accruing from any asset so transferred; or
  - (d) any asset representing, directly or indirectly, the accumulations of income accruing from any asset so transferred;
- (7) **"associated person"**, in relation to a person, means -
- (a) any relative of the person, if the person is an individual;
  - (b) any director of the company or any relative of such director, if the person is a company;
  - (c) any participant in an unincorporated body or any relative of such participant, if the person is an unincorporated body;



- (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;
  - (e) any individual who has a *substantial interest in the business of the person* or any relative of such individual;
  - (f) a company, unincorporated body or Hindu undivided family having a substantial interest in the business of the person or any director, participant, or member of the company, body or family, or any relative of such director, participant or member;
  - (g) a company, unincorporated body or Hindu undivided family, whose director, participant, or member have a substantial interest in the business of the person; or family or any relative of such director, participant or member;
  - (h) any other person who carries on a business, if,-
    - (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or
    - (ii) the person being a company, unincorporated body or Hindu undivided family, or any director, participant or member of such company, body or family, or any relative of such director, participant or member, has a substantial interest in the business of that other person;
- (8) **"benefit"** includes a payment of any kind;
- (9) **"broken period income"** shall be calculated as if the income from such securities had accrued from day to day and been apportioned accordingly for the broken period;
- (10) **"bonafide purpose"** shall not include any purpose which -
- (a) has created rights or obligations that would not normally be created between persons dealing at arm's length; or
  - (b) would result, directly or indirectly, in the misuse, or abuse, of the provisions of this Code;
- (11) **"capital sum"** means-
- (a) any sum paid by way of a loan or repayment of a loan; or
  - (b) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money's worth;
- (12) **"enterprise"** in relation to an international transaction includes-
- (a) a person who is, or has been, or is likely to be, engaged in any business, industrial, commercial, financial, construction, mining, research, investment or any other similar activity, whether such activity is carried on directly or through one, or more, of its units, divisions or subsidiaries, wherever located; and
  - (b) the permanent establishment of the person referred to in sub-clause (a);
- (13) **"funds"** includes,-
- (a) any cash;
  - (b) cash equivalents; and
  - (c) any right, or obligation, to receive, or pay, the cash or cash equivalent;
- (14) **"impermissible avoidance arrangement"** means a step in, or a part or whole of, an arrangement, whose main purpose is to obtain a tax benefit and it,-
- (a) creates rights, or obligations, which would not normally be created between persons dealing at arm's length;



- (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Code;
  - (c) lacks commercial substance, in whole or in part; or
  - (d) is entered into, or carried out, by means, or in a manner, which would not normally be employed for bonafide purposes;
- (15) **"international transaction"** means,-
- (a) a transaction between two or more associated enterprises, either or all of whom is a non-resident, in the nature of -
    - (i) purchase, sale or lease, of tangible or intangible property;
    - (ii) supply of service;
    - (iii) lending, or borrowing, money;
    - (iv) any other transaction, which has a bearing on the income, loss or asset of any one or more of the enterprises; or
    - (v) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred, or to be incurred, in connection with a benefit, service or facility provided, or to be provided, to any one or more of the enterprises.
  - (b) a transaction entered into by two or more persons, not being associated enterprises, if -
    - (i) one, or more, of the persons is a non-resident;
    - (ii) the transaction is of the nature referred to in items (i) to (iv) of sub-clause (a);and
    - (iii) there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise;
- (16) **"interest"** includes dividend;
- (17) **"lacks commercial substance"**- A step in, or a part or whole of, an arrangement shall be deemed to be lacking commercial substance, if-
- (a) it would result in a significant tax benefit for any party to the arrangement (but for the provisions of section 112) but does not have a significant effect upon the business risks, or net cash flows, of that party apart from any effect attributable to the tax benefit that would be obtained but for the provisions of section 112;
  - (b) the legal substance, or effect, of the avoidance arrangement as a whole is inconsistent with, or differs significantly from, the legal form of its individual steps; or
  - (c) it includes, or involves,-
    - (i) round trip financing without regard to,-
      - (A) whether or not the round tripped amounts can be traced to funds transferred to, or received by, any party in connection with the avoidance arrangement;
      - (B) the time, or sequence, in which round tripped amounts are transferred or received; or
      - (C) the means by, or manner in, which round tripped amounts are transferred or received.
    - (ii) an accommodating or tax indifferent party;

- (iii) any element that have the effect of offsetting or cancelling each other; or
- (iv) a transaction which is conducted through one or more persons and disguises the nature, location, source, ownership, or control, of the fund;
- (18) **"party"** means party to the arrangement;
- (19) **"round trip financing"** includes financing in which, -
  - (a) funds are transferred among the parties to the arrangement (hereinafter referred to as 'round tripped amounts'); and
  - (b) the transfer of the funds would,-
    - (i) result, directly or indirectly, in a tax benefit but for the provisions of section 112; or
    - (ii) significantly reduce, offset or eliminate any business risk incurred by any party to the arrangement;
- (20) **"similar security"** means security which entitles its holder to the same rights against the same person as to capital and interest and the same remedies for the enforcement of those rights, regardless of any difference in the-
  - (a) total nominal amounts of the respective security;
  - (b) form in which it is held; or
  - (c) manner in which it can be transferred;
- (21) **"substantial interest in the business"** - A person shall be deemed to have a substantial interest in the business, if,-
  - (a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent., or more, of the voting power; or
  - (b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent., or more, of the profits of such business.
- (22) **"tax benefit"** means,-
  - (a) a reduction, avoidance or deferral of tax or other amount payable under this Code in the relevant financial year or any other financial year;
  - (b) an increase in a refund of tax or other amount under this Code in the relevant financial year or any other financial year;
  - (c) a reduction, avoidance or dererral of tax or other amount that would be payable under this Code but for a tax treaty, in the relevant financial year or any other financial year; or
  - (d) an increase in a refund of tax or other amount under this Code as a result of a tax treaty, in the relevant financial year or any other financial year;
- (23) **"transaction"** in relation to an international transaction shall include an arrangement, understanding or action in concert,-
  - (a) whether or not such arrangement, understanding or action is formal or in writing; or
  - (b) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding;
- (24) **"transaction relating to buy and sale-back of the security"** means a transaction where a person buys a security, and sales or transfers the same, or similar, security.
- (25) **"transaction relating to sale and buy-back of the security"** means a transaction where a person, being the owner of any security, sells or transfers the security, and buys-back or reacquires the same, or similar, security;
- (26) **"transfer"** in relation to any right includes the creation of the right.

### Presumption of purpose

114. (1) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit unless the person obtaining the tax benefit proves that obtaining the tax benefit was not the main purpose of the arrangement.

- (2) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or part of, the arrangement is to obtain a tax benefit, regardless of the fact that the main purpose of whole arrangement may not be to obtain a tax benefit.

**PART - F**  
**TAX ADMINISTRATION AND PROCEDURE**

**CHAPTER - X**  
**TAX ADMINISTRATION AND PROCEDURE**

**A. - Tax administration**

**Establishment of institutions**

- 115.** The Central Government shall, for the purposes of this Code, establish the following:-
- (a) Central Board of Direct Taxes;
  - (b) Income Tax Department;
  - (c) Authority for Advance Ruling; and
  - (d) Income Tax Appellate Tribunal.

**Establishment of the Central Board of Direct Taxes**

- 116.**(1) The Central Government shall establish, for the purposes of this Code, a Board by the name of the Central Board of Direct Taxes.
- (2) The head office of the Board shall be at New Delhi.

**Management of the Board**

- 117.**(1) The Board shall consist of a Chairman and not less than six Members, as may be appointed by the Central Government in accordance with the rules made in this behalf.
- (2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of Members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.
- (3) Save as otherwise provided by rules, the Chairman shall have the powers of general superintendence and direction of all the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board or any Member thereof.

**Delegation**

- 118.**(1) The Board may, by general or special order in writing, delegate to any Member subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Code as it may deem necessary.
- (2) Save as otherwise provided by rules, a Member shall have the powers of general superintendence and direction of such affairs of the Board as may be assigned to him by the Central Government.
- (3) The Member shall exercise all the powers and do all acts and things which may be exercised or done by that Board in respect of the work so assigned to him under sub-section (2).

**Term of office and conditions of service of Chairman and Members of the Board**

- 119.** The term of office and other conditions of service of the Chairman and the Members referred to in section 117 shall be such as may be prescribed.

### Meetings

- 120.**(1) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules.
- (2) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other Member chosen by the Members present from amongst themselves at the meeting, shall preside at the meeting.
- (3) All questions which come up before any meeting of the Board shall be decided by consensus.

### Secretariat of the Board

- 121.**(1) The Board may, subject to the prescribed rules, appoint Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Code.
- (2) The term and other conditions of service of officers and employees of the Board appointed under sub-section (1) shall be such as may be determined by rules.

### Attached offices of the Board

- 122.** The Board may, with the approval of the Central Government, establish Directorates by notification in the Official Gazette to assist the Board in the discharge of its functions.

### Subordinate offices of the Board

- 123.**(1) The Board may, with the approval of the Central Government, establish by notification in the Official Gazette, subordinate offices at such places as is considered necessary for the purposes of this Code.
- (2) The subordinate offices established under sub-section (1) shall be organizational units consisting of income-tax authorities and executive and ministerial staff, employed in the execution of this Code.

### Functions of the Board

- 124.**(1) Subject to the provisions of this Code, it shall be the duty of the Board to collect revenues in a fair and transparent manner.
- (2) For the purposes of sub-section (1), the Board shall,-
- (a) formulate strategies for -
    - (i) effectively and efficiently detecting and penalizing non-compliance with the provisions of this Code;
    - (ii) providing quality taxpayers' service to promote voluntary compliance;
    - (iii) educating taxpayers;
    - (iv) promoting tax literacy;
    - (v) redressal of taxpayers' grievances; and
    - (vi) performing such other functions as may be assigned by the Central Government from time to time to the Income Tax Department;
  - (b) supervise and regulate the functions of the Income-tax Department;
  - (c) call for information and record from any bank or any other authority or Board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction which is under investigation or inquiry by the Board or Income-tax Department;

- (d) call from or furnish to any such agencies, as may be prescribed by the Central Government, such information as may be considered necessary by the Board for the efficient discharge of its functions; and
- (e) perform such other functions as may be prescribed.

### **Grants by the Central Government**

- 125.**(1) The Board shall prepare an estimate of the sums of money which may be required in any financial year for meeting the following expenditure:-
- (a) the salaries, allowances and other remuneration of the Members, officers, and other employees of the Board, its attached offices and the Income-tax Department; and
  - (b) the expenses of the Board, its attached offices and the Income-tax Department in the discharge of its functions under this Code.
- (2) The estimate prepared under sub-section (1) shall, on approval by the Central Government with such modifications as may be considered necessary on the basis of discussion with the Board, be presented to the Parliament for due appropriation by law.
- (3) The Central Government shall, after due appropriation under sub-section (2), make to the Board grants of the amount so appropriated for being utilised for the purposes referred to in sub-section (1).
- (4) The administration of the grant referred to in sub-section (3) shall, regardless of anything contained in any other law or rules, vest in the Board.

### **Accounts and audit**

- 126.**(1) The Board shall maintain proper accounts of the grant referred to in section 125 and other relevant records and prepare an annual statement of the accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the grant shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.
- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the grant shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts.
- (4) The accounts of the grant as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

### **Power of Central Government to issue directions**

- 127.**(1) The Board shall, in exercise of its powers or the performance of its functions under this Code, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.
- (2) The Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under sub-section (1).
- (3) The decision of the Central Government whether a question is one of policy or not shall be final.

### Returns and reports

- 128.** (1) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to its functions and duties, as the Central Government may, from time to time, require.
- (2) Without prejudice to the provisions of sub-section (1), the Board shall, within ninety days after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the immediately preceding financial year.
- (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

### Establishment of the Income Tax Department

- 129.** The Board shall, with the approval of the Central Government, establish an Income Tax Department (hereafter referred to as 'Department') for the purpose of this Code.

### Income-tax authorities

- 130.** There shall be the following classes of income-tax authorities for the purpose of this Code, namely:-
- (a) Chief Commissioners of Income-tax or Directors-General of Income-tax,
  - (b) Commissioners of Income-tax or Directors of Income-tax or Commissioners of Income-tax (Appeals),
  - (c) Additional Commissioners of Income-tax or Additional Directors of Income-tax,
  - (d) Joint Commissioners of Income-tax or Joint Directors of Income-tax,
  - (e) Deputy Commissioners of Income-tax or Deputy Directors of Income-tax,
  - (f) Assistant Commissioners of Income-tax or Assistant Directors of Income Tax,
  - (g) Transfer Pricing Officers,
  - (h) Income-tax Officers,
  - (i) Tax Recovery Officers,
  - (j) Inspectors of Income-tax.

### Appointment and control of income-tax authorities

- 131.** (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities in accordance with the rules prescribed in this behalf.
- (2) The Central Government may authorise the Board to appoint income-tax authorities, below the rank of an Assistant Commissioner, subject to the rules and orders of the Central Government in this behalf.
- (3) The Board may authorise an income-tax authority (not below the rank of Commissioner of Income Tax) to appoint the income tax authorities referred to in sub-section (2), subject to the rules and orders of the Central Government in this behalf.
- (4) The Board may authorize an income-tax authority to appoint such executive or ministerial staff, as may be necessary to assist it in the execution of its functions, subject to the rules and orders of the Central Government in this behalf.
- (5) The Board may prescribe, by rules, that any income-tax authority shall be subordinate to such other income-tax authority, as may be specified therein.
- (6) The instructions, directions or orders of an income-tax authority shall be binding on any other income-tax authority, executive and ministerial staff, sub-ordinate to him.

### Power of higher authorities

- 132.** (1) Any income-tax authority, above the rank of Assessing Officer, shall have all the powers that an Assessing Officer has under this Code for making enquiries on any issue in a proceeding pending with the authority.
- (2) The subordinate officer shall cease to exercise the power to hold the enquiry referred to in sub-section (1) in respect of the issue, while the superior officer exercises the power therein.

### Instructions by the Board

- 133.** (1) The Board may issue orders, instructions, directions or circulars for the proper and efficient management of this Code, if it considers it necessary or expedient so to do.
- (2) The Board shall not issue any order or instruction or direction or circular under sub-section (1) so as to-
- (a) require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner;
  - (b) interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions;
  - (c) extend the date specified under this Code for completion of any proceedings or issuing any notice or taking any action by any income-tax authority;
  - (d) relax any requirement or condition contained in any of the provisions of the Code in relation to grant of any deduction or any other relief under this Code;
  - (e) admit any application or claim for any exemption, deduction, refund or any other relief under this Code after the expiry of the period specified by or under this Code for making the application or claim;
  - (f) exempt any income, partly or fully, liable to tax under the Code, unless otherwise provided.
- (3) The income-tax authorities and all other persons employed in the execution of this Code shall observe and follow the orders, instructions, directions and circulars issued by the Board under this section.
- (4) All public orders and circulars issued by the Board under this section shall be notified in the Official Gazette.
- (5) All internal orders, instructions, directions and circulars issued by the Board under this section shall be published in a tax bulletin or on the intranet of the Income-tax Department.

### Jurisdiction of income-tax authorities

- 134.**(1) The Board may, by notification in the Official Gazette, assign jurisdiction for the exercise of the powers and performance of the functions by all, or any of, the income-tax authorities.
- (2) The Board may, by notification in the Official Gazette, authorise any income-tax authority to assign jurisdiction to all, or any of, the other income-tax authorities, who are subordinate to it, for the exercise of the powers and performance of the functions.
- (3) The income-tax authorities shall exercise all, or any of, the powers and perform all, or any of, the functions conferred on, or assigned to, them by or under this Code.



- (4) The income-tax authorities authorized under sub-section (2) may, by notification in the Official Gazette, assign jurisdiction for the exercise of the powers and performance of the functions by all, or any of, the income-tax authorities who are subordinate to it.
- (5) The jurisdiction under sub-section (1) may be assigned having regard to any one or more of the following criteria, namely:-
  - (a) territorial area;
  - (b) person or class of persons;
  - (c) tax bases or class of tax base; and
  - (d) cases or class of cases.
- (6) The Board may, by notification in the Official Gazette, authorize any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board.
- (7) The Chief Commissioner, if authorized by the Board, may direct two or more Assessing Officers (whether of same rank or not) to exercise and perform, concurrently, the powers and functions conferred on, or assigned to, them.
- (8) The Assessing Officer being lower in rank shall follow the directions of the Assessing Officer being higher in rank, if two or more Assessing Officers of different class have been directed under sub-section (7) to exercise and perform concurrently.
- (9) The Board may direct any income-tax authority being an authority higher in rank, to exercise the powers and perform the functions of the income-tax authority being an authority lower in rank.

### Jurisdiction of Assessing Officers

- 135.** (1) The Assessing Officer who has been vested with jurisdiction over any area, by virtue of any direction or order issued under section 134, shall, within the limits of such area, have jurisdiction in respect of -
- (a) any person carrying on a business, if-
    - (i) in a case where the business is carried on in more places than one, the principal place of his business is situate within the area; or
    - (ii) in any other case, the place at which he carries on his business is situate within the area; and
  - (b) any other person residing within the area.
- (2) Any dispute relating to jurisdiction of any Assessing Officer shall be decided by the Chief Commissioner under whom the Assessing Officer function.
  - (3) Any dispute relating to jurisdiction of the Assessing Officer where it relates to areas within the jurisdiction of different Chief Commissioners shall be decided by consensus between the Chief Commissioners and if they are not in agreement, by the Board, or by such Chief Commissioner as the Board may direct.
  - (4) No person shall be entitled to question the jurisdiction of an Assessing Officer-
    - (a) after the expiry of one month from the date on which he was served with the notice under sub-section (1) of section 157, if the person has furnished a return under sub-section (1) of section 148;
    - (b) after the expiry of the time allowed by the notice under sub-section (1) of section 151, under sub-section (1) of section 152 or under sub-section (1) of section 166, if no return has been filed;
    - (c) after the completion of assessment.
  - (5) The Assessing Officer shall refer to the Chief Commissioner any objection raised by the assessee relating to his jurisdiction if the Assessing Officer is not satisfied with the correctness of such objection.



- (6) Every Assessing Officer shall have all the powers conferred by, or under, this Code on an Assessing Officer in respect of the tax base accruing, or receipt, within the area over which he has been vested with jurisdiction under section 134, regardless of anything contained in this section or in any direction or order issued under section 134.

### **Power to transfer cases**

- 136.** (1) The Chief Commissioner or Commissioner may transfer a case from any Assessing Officer subordinate to him to any other Assessing Officer subordinate to him,
- (2) The Chief Commissioner may pass an order transferring out a case from any Assessing Officer subordinate to him to any Assessing Officer subordinate to any other Chief Commissioner, if there is agreement with the other Chief Commissioner.
- (3) The Board, or the Chief Commissioner as may be authorised by the Board, may pass the order transferring out a case from any Assessing Officer subordinate to a Chief Commissioner to any Assessing Officer subordinate to any other Chief Commissioner, if there is no agreement between the Chief Commissioners.
- (4) Any order under this section shall be passed after giving the person, whose case is being transferred, an opportunity of being heard in the matter, wherever it is possible to do so, and after recording the reasons for the transfer.
- (5) However, it shall not be necessary to provide an opportunity of being heard in the matter, if the case is being transferred from an Assessing Officer to another Assessing Officer located in the same city.
- (6) The transfer of a case under this section may be made at any stage of the proceedings, and it shall not be necessary to re-issue any notice already issued by the transferor Assessing Officer.

### **Change of incumbent**

- 137.** (1) The income-tax authority who succeeds another authority as a result of change in jurisdiction or any other reason, shall continue the proceeding from the stage at which it was left by his predecessor.
- (2) However, an assessee may demand that he may be allowed an opportunity of being heard before passing any order under this Code in his case.

### **Powers regarding discovery, production of evidence, etc.**

- 138.** (1) The prescribed income-tax authorities shall, in the course of any proceeding under, or for making any enquiry or investigation for the purposes of, this Code, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:-
- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.
- (2) Any income-tax authority prescribed for the purposes of sub-section (1) may, subject to the rules made in this behalf, impound any books of account and other documents produced before it and retain them in its custody for such period as he thinks fit.
- (3) The income-tax authority below the rank of Joint Commissioner shall not -
- (a) impound any books of account or other documents without recording his reasons for so doing; or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Commissioner.

### Search and seizure

139. (1) The Competent Investigating Authority may authorise any Authorised Officer to carry out search and seizure operation, if he has, in consequence of information in his possession, reason to believe that -
- (a) any person to whom a summon under sub-section (1) of section 138, or a notice under section 151 or section 152 or section 157 was issued, has omitted, or failed, to furnish the material as required by such summon or notice;
  - (b) any person to whom a summon or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any material which will be useful for, or relevant to, any proceeding under the Income-tax Act, 1961, or the Wealth-tax Act, 1957, or under this Code, or
  - (c) any person is in possession of any material which represents either wholly or partly the tax base or property which has not been, or would not be, disclosed for the purposes of the Income-tax Act, 1961, or the Wealth-tax Act, 1957, or this Code (hereinafter in this section referred to as the undisclosed tax base or property).
- (2) The Authorised Officer shall, in pursuance to an authorisation issued under sub-section (1), carry out the search and seizure operation and, for this purpose, have all the powers to -
- (a) enter and search any building, place, vessel, vehicle or aircraft where the Competent Investigating Authority has reason to suspect that any material, referred to in sub-section (1), are kept;
  - (b) break open the lock of any door, box, locker, safe, almirah or other receptacle or exercising the powers conferred by clause (a) where the keys thereof are not available;
  - (c) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the Authorised Officer has reason to suspect that such person has secreted about his person any such material;
  - (d) require any person who is found to be in possession or control of any type of material, being books of account or other document, maintained in the form of electronic record as defined in clause (i) of sub-section (1) of section 2 of the Information Technology Act, 2000, to afford the Authorised Officer the necessary facility to inspect such material;
  - (e) seize any such material, not being stock-in-trade, found as a result of such search;
  - (f) seize any stock in trade of bullion, precious or semi-precious stones or jewellery, found as a result of such search;
  - (g) place marks of identification on any material, being books of account or other documents, or make or cause to be made extracts or copies therefrom;
  - (h) make a note or an inventory of any such material.
- (3) A Competent Investigating Authority may exercise the powers of search and seizure conferred under sub-section (1), if he exercises jurisdiction over the person referred to in sub-section (1).
- (4) However, the Competent Investigating Authority may also exercise the powers of search and seizure conferred under sub-section (1), if -
- (a) the building, place, vessel, vehicle or aircraft, referred to in sub-section (2), is located within the area of his jurisdiction regardless of the fact that he does not have jurisdiction over the person referred to in sub-section (1); and

- (b) he has reason to believe that any delay in getting the authorisation from the Competent Investigating Authority having jurisdiction over such person may be prejudicial to the interests of the revenue.
- (5) The Competent Investigating Authority may issue a consequential authorisation to any Authorised Officer to exercise the powers under sub-section (2) in respect of any building, place, vessel, vehicle or aircraft, if he, in consequence of information in his possession, has reason to suspect that any material in respect of which an authorisation under sub-section (1) has been issued by the same, or any other, Competent Investigating Authority are, or is, kept in any such building, place, vessel, vehicle or aircraft.
  - (6) The Authorised Officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (2) and it shall be the duty of every such officer to comply with such requisition.
  - (7) The Authorised Officer, if he is satisfied that it is not practicable to seize any material, may serve an order on the owner or the person, who is in immediate possession or control of such material, that he shall not remove, part with or otherwise deal with it except with his previous permission.
  - (8) The order under sub-section (7) shall remain in force for a period not exceeding two months from the end of the month in which the order was served and the Authorised Officer may take such steps as may be necessary for ensuring compliance with the order.
  - (9) The Authorised Officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any material and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Income-tax Act, 1961 or the Wealth-tax Act, 1957 or under this Code.
  - (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, so far as may be, to search and seizure operation under this section.
  - (11) The Board may make rules-
    - (a) to provide for the procedure to be followed by the authorised officer -
      - (i) for obtaining ingress into any building, place vessel, vehicle or aircraft to be searched where free ingress thereto is not available; and
      - (ii) for ensuring safe custody of any material seized; and
    - (b) any other matter in relation to search and seizure operation under this section.

### **Powers to requisition material taken into custody**

- 140.**(1) The Competent Investigating Authority may authorise any income-tax authority (hereinafter referred to as the "Requisitioning Officer") to require any officer or authority to deliver the material, which have been taken into custody by such officer or authority under any other law for the time being in force, to the Requisitioning Officer.
- (2) The authorisation under sub-section (1) shall be issued by the Competent Investigating Authority if he has, in consequence of information in his possession, reasons to believe that -
    - (a) any person to whom a summons under sub-section (1) of section 138, or a notice under section 151 or section 152 or section 157 was issued, has omitted or failed to produce, or cause to be produced, such material; or

- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such material which will be useful for, or relevant to, any proceeding under the Income-tax Act, 1961 or the Wealth-tax Act, 1957 or under this Code; or
  - (c) any person is in possession of any material which represents either wholly or partly tax base or property which has not been, or would not be, disclosed for the purposes of the Income-tax Act, 1961 or the Wealth-tax Act, 1957 or under this Code.
- (3) The officer or authority referred to in sub-section (1) shall deliver the material to the Requisitioning Officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

#### Retention and release of books of account or documents seized or requisitioned

- 141.**(1) The Authorised Officer shall hand over the books of account or document seized under section 139, within a period of sixty days from the date on which last of the authorisation for search was executed, to the Assessing Officer, if the authorised officer has no jurisdiction over the person from whom the books of accounts or documents were seized.
- (2) The Requisitioning Officer shall hand over the books of account or document delivered under section 140, within a period of sixty days from the date on which books of account or document were received, to the Assessing Officer, if the Requisitioning Officer has no jurisdiction over the person from whom the books of accounts or documents were taken into custody under any other law for the time being in force.
- (3) The officers, referred to in sub-sections (1) and (2), shall, on an application made by the person referred therein, allow him to make copies of, or take extracts from, the books of account or document seized or requisitioned.
- (4) The officers, referred to in sub-sections (1) and (2), may retain the books of account or documents, seized or requisitioned, up to a period of thirty days from the date of assessment under section 169.
- (5) The officers, referred to in sub-sections (1) and (2), may retain the books of accounts or documents seized beyond the period specified in sub-section (4) after obtaining the approval of the Chief Commissioner or Commissioner.
- (6) The Chief Commissioner, or Commissioner, shall not allow the retention of the books of account seized beyond a period of thirty days from the date on which the proceedings under this Code, for which such books of account or document are relevant, are completed.
- (7) The officer, referred to in sub-sections (1) and (2), may, with the approval of the Chief Commissioner or Commissioner, return any books of account or document before completion of assessment or any other relevant proceedings, after retaining a copy or extract of such books of account or document, if he is satisfied that the return of such books of account or document shall not adversely affect the interest of revenue.

#### Delivery of material belonging to other persons

- 142.** The Assessing Officer, having jurisdiction over the person in whose case search and seizure operation was carried out under section 139, or requisition was made under section 140, shall hand over any material to the Assessing Officer having jurisdiction over another person, if he is satisfied that the material seized, or requisitioned, belongs to the other person.

### Retention and application of seized or requisitioned assets

- 143.(1) The Assessing Officer may recover the amount of any liability, referred to in sub-section (2),-
- (a) out of the material, other than books of accounts or documents, (hereinafter referred to as 'assets') seized under section 139 or requisitioned under section 140; or
  - (b) by any other mode laid down under this Code.
- (2) The amount of any liability shall be the aggregate of -
- (a) the amount of any liability existing under this Code, the Income-tax Act, 1961, the Wealth-tax Act, 1957, the Gift-tax Act, 1958, the Interest-tax Act, 1974 and the Expenditure-tax Act, 1987, till the date of search under section 139 or requisition under section 140;
  - (b) the amount of any liability under this Code, or under any of the Acts referred to in clause (a), determined after the date of the search, or requisition, and till the date of completion of the assessment in consequence to the search or the requisition;
  - (c) the amount of any liability determined on completion of the assessment in consequence to the search or the requisition; and
  - (d) the amount of any liability under this Code, or under any of the Acts referred to in clause (a), determined after the completion of the assessment in consequence to the search, or the requisition, and till the date of release of the assets.
- (3) The Assessing Officer may recover the existing liability referred to in clause (a) of sub-section (2) and release the remaining portion of the asset, if any, within a period of one hundred and twenty days from the date on which last of the authorisations for search under section 139 was executed, to the person from whose custody the assets were seized, if -
- (a) an application is made by the person within thirty days from the end of the month in which the assets were seized;
  - (b) the nature and source of the asset is explained by the person to the satisfaction of the Assessing Officer; and
  - (c) the prior approval of the Chief Commissioner or Commissioner is obtained.
- (4) The assets, other than money, shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer and the recovery of any liability out of such assets shall be effected in the manner laid down in The Fifth Schedule.
- (5) The Assessing Officer shall release, within the time and subject to such conditions prescribed, to the person from whose custody the assets were seized, any asset or proceeds thereof, which remains after the liabilities referred to in sub-section (1) are discharged.
- (6) The Assessing Officer may release any seized or requisitioned asset (other than cash) before making assessment in consequence of search or requisition, if the concerned person deposits with the Assessing Officer an amount of money equal to the value of such asset on the date of the release and the amount so deposited shall be deemed to be cash seized or requisitioned for the purposes of this Code.

### Power to call for information

144. (1) For the purposes of this Code, the Board may, regardless of anything to the contrary contained in any law for the time being in force, require -
- (a) any prescribed person to furnish the prescribed information within such time and in such form and manner as may be prescribed; and

- (b) any prescribed income-tax authority to call for the prescribed information in such form and manner as may be prescribed.
- (2) Any income-tax authority, not below the rank of an Income Tax Officer, may require any person to furnish any information as may be useful for, or relevant to any enquiry or proceeding, pending before him under this Code, in such form, manner and within such time as may be specified by him.
- (3) Without prejudice to the generality of the definition of the term 'person', it shall, for the purposes of this section, include a banking company or any officer thereof.

### Power of survey

- 145.** (1) The prescribed income-tax authority may enter, or authorise any other income-tax authority to enter, any place at which a business is carried out by a person, if -
- (a) he has reason to suspect that the person has not complied with the provisions of this Code; and
  - (b) the place is -
    - (i) within the limits of the area assigned to him; or
    - (ii) occupied by any person in respect of whom he exercises jurisdiction.
- (2) The income-tax authority, referred to in sub-section (1), shall enter any place of business referred to therein only during the hours at which such place is open for the conduct of business and, in the case of any other place, only after sunrise and before sunset.
- (3) On entering the place, the income-tax authority may require any person, who may be attending in any manner to the business at the place, to -
- (a) afford him to inspect the books of account or documents available at the place;
  - (b) afford him to check or verify the cash, stock or other valuable article or thing found there; and
  - (c) furnish any information relevant, or useful, for the proceedings under this Code, or the Income tax Act 1961, in respect of the person or any other person.
- (4) For the purposes of this section, any place at which a business is carried out includes a place-
- (a) which is not the principal place of such business;
  - (b) where any business or activity is being carried out and the tax base relating to such business or activity is not to be included in the total tax base under any provision of this Code;
  - (c) where any of the books of account, documents, cash, stock-in-trade or valuables, relating to the business, or activity, referred to in sub-clause (b), are kept; or
  - (d) where any of the books of account, documents or other record containing the particulars regarding deduction of tax at source, or collection of tax at source, made, or required to be made, under this Code, are kept.
- (5) On entering the place, the income tax authority may -
- (a) place marks of identification on the books of account, documents or record inspected by him and take extracts, or copies, therefrom;
  - (b) impound any books of account, documents or record inspected by him, after recording the reasons for doing so;
  - (c) make an inventory of cash, stock or valuables; or
  - (d) examine on oath any person if his statement would be useful for, or relevant to, any proceeding under this Code.
- (6) The statement made by any person under clause (d) of sub-section (5) may be used in evidence in any proceeding under this Code.

- (7) The income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered any cash, stock or other valuable article or thing.
- (8) The income-tax authority shall not retain any books of account, documents or record impounded by him under this section beyond a period of one month without the approval of the Commissioner.
- (9) The income-tax authority, other than an Inspector, shall have all the powers under sub-section (1) of section 138 for enforcing compliance, if a person refuses, or evades, to-
  - (a) afford the facility to the income-tax authority to inspect books of accounts or other documents;
  - (b) allow checking or verifying any cash, stock or other valuable article or thing;
  - (c) furnish any information; or
  - (d) have his statement recorded.

**Power to disclose information in respect of assessee**

- 146(1)** No information in respect of any assessee shall be provided to any person by,-
- (a) the Board;
  - (b) any officer, authority or executive and ministerial staff, in the secretariat, attached office or sub-ordinate office of the Board; or
  - (c) any person, agency or authority engaged in any manner in the administration of this Code.
- (2) However, the Board, or any person specified by it by an order in this behalf, may furnish, or cause to be furnished, any information in respect of an assessee to any other person performing any functions under-
    - (a) any law relating to the imposition of any tax, duty or cess, or to dealings in foreign currency; or
    - (b) any other law as the central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf.
  - (3) The information referred to in sub-section (2) shall be only such information which fulfills the following conditions-
    - (a) the information is received or obtained by the Board, or any person specified by it by an order under that sub-section, in the performance of its or his functions under this Code; and
    - (b) the information is, in the opinion of the person furnishing the information, necessary for the purpose of enabling the other person receiving the information to perform the functions under the laws referred to in that sub-section.
  - (4) The Chief Commissioner or Commissioner may furnish, or cause to be furnished, to any person any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Code, if-
    - (a) the person makes an application to the Chief Commissioner or Commissioner in the prescribed form; and
    - (b) the Chief Commissioner or Commissioner is satisfied that it is in the public interest so to do.
  - (5) The decision of the Chief Commissioner or Commissioner under sub-section (4) shall be final and shall not be called in question in any court of law.
  - (6) The Central Government may, regardless of anything to the contrary contained in this section, direct by order notified in the Official Gazette that no information



shall be furnished under sub-section (2) or sub-section (4) in respect of such matters relating to such class of assessees, or to such authorities, as may be specified in the order.

### Proceedings before tax authorities to be judicial proceedings

- 147.** (1) Any proceeding under this Code before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860, and for the purposes of section 196 of the Indian Penal Code, 1860.
- (2) Every income-tax authority shall be deemed to be a Civil Court for the purposes of section 189, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

## B. - Assessment Procedure

### Self-reporting of tax bases

- 148.**(1) Every person shall furnish a return of tax bases before the due date.
- (2) The person referred to in sub-section (1) shall,-
- (a) in relation to income, be the following:-
- (i) an individual, if his gross total income from ordinary sources exceeds the threshold limit;
  - (ii) a company;
  - (iii) a firm;
  - (iv) a non-profit organisation;
  - (v) a political party;
  - (vi) any person who intends to carry forward the loss or any part thereof in accordance with the provisions of this Code;
  - (vii) any person who derives any income from special sources and is liable to pay income-tax thereon; and
  - (viii) any other person, if his gross total income from ordinary sources exceeds the threshold limit;
- (b) in relation to dividend distributed, be the following:-
- (i) a company resident in India; and
  - (ii) a mutual fund;
- (c) in relation to net wealth, be an individual, a Hindu undivided family or a private discretionary trust, if their net wealth exceeds the maximum amount which is not liable to wealth-tax.
- (3) The return of tax bases referred to in sub-section (1) shall be a return in respect of the tax bases of the person referred to in sub-section (2) or the tax bases of any other person in respect of which such person is assessable for the relevant financial year.
- (4) The return of tax bases shall be,-
- (a) verified in the prescribed form and manner and setting forth such other particulars as may be prescribed; and
  - (b) furnished to the Income-tax Department or such other authority or agency as may be prescribed.
- (5) The forms of the return referred to in sub-section (4) shall, in such cases as may be prescribed, require the assessee to furnish particulars relating to the following:-
- (a) income exempt from tax;
  - (b) assets of the prescribed nature and value;



- (c) bank account and credit card held;
- (d) expenditure exceeding the prescribed limits incurred by him; and
- (e) such other outgoings as may be prescribed.
- (6) A person may, if he discovers any omission or any wrong statement in the return of tax bases furnished by him under sub-section (1), revise such return at any time before the expiry of twenty-one months from the end of the relevant financial year or before the completion of the assessment, whichever is earlier.
- (7) A person may furnish the return for any financial year at any time before the expiry of twenty-one months from the end of the relevant financial year or before the completion of the assessment, whichever is earlier if -
- (a) such person has not furnished a return by the due date; and
- (b) no notice under sub-section (1) if section 151 or sub-section (1) of section 152 has been served on him.
- (8) The Assessing Officer may, if he finds that the return has not been furnished by any person in the prescribed form and manner or does not contain the particulars, as required under sub-section (4), intimate to such person the deficiency and allow an opportunity to such person to remove the deficiency within thirty days from the service of the intimation.
- (9) The Assessing Officer shall treat the return filed by a person as invalid, if the deficiency referred to in sub-section (8) is not removed within the time allowed and the provisions of the Code shall apply as if the person had failed to furnish the return.
- (10) The return of tax bases of a person specified in column (2) of the Table 5 below shall be signed and verified by a person specified in Column (3) of the said Table:

TABLE 5

Sl. No.	Person furnishing the return	Person to sign and verify the return
(1)	(2)	(3)
(1)	Individual being mentally incapacitated from attending his affairs	(a) guardian of the individual; or (b) any other person duly competent to act on his behalf
(2)	Any other Individual	(a) Individual himself; or (b) any person duly authorized by the individual in this regard, if the individual is absent from India or for some other reason it is not possible for him to sign the return, and other person holds a valid power of attorney from the individual to do so.
(3)	Hindu undivided family	(a) Karta of the d family; or (b) any other adult member of the family if the karta is absent from India or is mentally incapacitated from attending to his affairs
(4)	company not being resident in India	Any person who holds a valid power of attorney from the company to do so

Sl. No.	Person furnishing the return	Person to sign and verify the return
(1)	(2)	(3)
(5)	(a) Company which is being wound court or otherwise; or (b) company where any person has been appointed as the receiver of any assets of the company	Liquidator referred to in clause (g) of sub section 1 of section 170.
(6)	Company whose management has been taken over by the Central Government or any State Government under any law	Principal officer of the company
(7)	Any other company	(a) Managing director of the company, or (b) any director of the company if there is no managing director or the managing director, for any unavoidable reason is not able to sign and verify the return.
(8)	Firm	(a) managing partner of the firm; or (b) any partner (not being a minor) of the firm if there is no managing partner or the managing partner, for any unavoidable reason, is not able to sign and verify the return
(9)	Limited liability partnership	(a) designated partner of the limited liability partnership; or (b) any partner (not being a minor) of the limited liability partnership if there is no designated partner or the designated partner, for any unavoidable reason, is not able to sign and verify the return
(10)	Local authority	Principal officer of the authority
(11)	Political party	Chief executive officer ( whether such Chief executive officer is known as secretary or by any other designation) of the party
(12)	Any other association of persons	Any member or the principal officer of the association
(13)	Any other person	(a) person himself; or (b) any person competent to act on this behalf.

(11) Any person who is otherwise not required to furnish a return of tax bases under sub-section (1) may furnish a return of tax bases before the expiry of the twenty one months from the end of the relevant financial year and all the provisions of

this Code shall, as far as may be, apply as if it is a return furnished under that sub-section.

### **Reporting of international transaction**

- 149.**(1) Every person who has entered into an international transaction during the financial year shall furnish a report of the transaction to the Transfer Pricing Officer on or before the due date.
- (2) The report referred to in sub-section (1) shall be obtained from an accountant in the prescribed form duly signed and verified in the prescribed manner by such accountant.

### **Tax Return Preparer**

- 150.**(1) The Board may, without prejudice to the provisions of section 148, frame a Tax Return Preparer Scheme so as to allow a Tax Return Preparer to prepare and furnish the return of tax bases of any specified class of persons, in accordance with the Scheme.
- (2) Every Tax Return Preparer shall affix his signature on the return so prepared by him.
- (3) The Scheme framed by the Board under this section may provide for the following namely:-
- the manner in which and the period for which the Tax Return Preparers shall be authorised under sub-section (4);
  - the eligibility criteria for a person to qualify as a Tax Return Preparer;
  - the code of conduct for the Tax Return Preparer;
  - the duties and obligations of the Tax Return Preparer;
  - the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn;
  - any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.
- (4) For the purposes of this section,-
- “**Tax Return Preparer**” means any individual who has been authorised to act as a Tax Return Preparer under the Scheme framed under this section;
  - “**Tax Return Preparer Scheme**” means a Scheme framed by the Board and notified in the Official Gazette, providing for preparing and furnishing of the return of tax bases through a Tax Return Preparer; and
  - “**specified class of persons**” means any person who is required to furnish a return of income under this Code, other than a company or a person, whose accounts are required to be audited under section 84.

### **Issue of notice to stop-filer**

- 151.** (1) The Assessing Officer may serve a notice on a stop-filer within twenty-one months from the end of the relevant financial year requiring such person to furnish a return of tax bases for the relevant financial year.
- (2) The person in receipt of notice issued under sub-section (1) shall furnish the return within thirty days from the date of receipt of the notice and the return shall be furnished and verified, in the prescribed form and manner and setting forth such other particulars as may be prescribed.

### **Issue of notice to non-filer**

- 152.**(1) The Assessing Officer may serve a notice on a non-filer within twenty-one months from the end of the relevant financial year requiring him to furnish a return of tax bases for the relevant financial year.

- (2) The person in receipt of notice issued under sub-section (1) shall furnish the return within thirty days from the date of receipt of the notice and the return shall be furnished and verified, in the prescribed form and manner and setting forth such other particulars as may be prescribed.

### Self-assessment tax

- 153.**(1) The assessee shall be liable to pay before furnishing the return of tax bases, the aggregate of the following amounts as self-assessment tax:-
- (a) the amount of tax payable on the basis of the return required to be furnished under this Code for any financial year as reduced by the amount of tax paid and tax credit, if any, under this Code for such financial year; and
  - (b) the amount of interest payable under any provisions of this Code for such financial year.
- (2) The amount paid as self-assessment tax for any financial year shall first be adjusted towards the interest payable under any provisions of this Code and the balance, if any, shall be adjusted towards the tax payable, if the amount of the self-assessment tax paid falls short of the self-assessment tax payable under sub-section (1).

### Acknowledgment of return

- 154.** On receipt of any return of tax bases for any financial year, the Department, or any other person authorised by the Board in this behalf, shall issue an electronic acknowledgement for receipt of the return.

### Processing of return

- 155.**(1) The Department shall process the return received under section 154 in the following manner, namely :-
- (a) the tax bases shall be computed after making the following adjustments, namely:-
    - (i) any arithmetical error in the return; and
    - (ii) an incorrect claim, if such incorrect claim is apparent from the existence of any information in the return.
  - (b) the tax and interest, if any, shall be computed on the basis of the tax base computed under clause (a);and
  - (c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any pre-paid taxes and any other amount paid by way of tax and interest.
- (2) The Department shall send an intimation in the prescribed form to the assessee specifying the tax bases so computed, the liability to pay tax on such tax bases, the amount of credit allowed for prepaid taxes and the sum payable by, or refundable to, him and such other particulars as may be prescribed.
- (3) The Department shall not send any notice of demand under section 168 in respect of any sum payable on account of any adjustment made under sub-section (1), if the return is processed after the expiry of twelve months from the end of the month in which the return is furnished.
- (4) The Department may make a scheme for centralised processing of returns, for the purposes of processing the return under sub-section (1), with a view to expeditiously determining the taxpayable by, or the refund due to, the assessee.
- (5) For the purposes of this section,-
- (a) “an incorrect claim apparent from the existence of any information in the return” shall mean a claim, on the basis of an entry, in the return -

- (i) of an item, which is inconsistent with another entry of the same, or some other item, in such return;
  - (ii) in respect of which information required to be supplied to substantiate such entry has not been so furnished; or
  - (iii) in respect of a deduction, where such deduction exceeds the specified statutory limit which may have been expressed as monetary amount, percentage, ratio or fraction;
- (b) any sum payable on account of any adjustment made under sub-section (3) means the aggregate of,-
- (i) tax payable on the tax base determined pursuant to processing under sub-section (1) as reduced by the tax payable on the tax base declared in the return; and
  - (ii) the interest payable on the amount determined under sub-clause (i).

### Selection of return for scrutiny assessment

- 156.** (1) The Department, or the prescribed Directorate, may,-
- (a) after processing the return in the manner provided in section 155, select any return for the purposes of scrutiny assessment; or
  - (b) select any case for the purposes of scrutiny assessment, if -
    - (i) a return has been treated as invalid under sub-section (9) of section 148; or
    - (ii) no return has been filed in pursuance to a notice under sub-section (1) of section 151 or a notice under sub-section (1) of section 152.
- (2) The selection referred to in sub-section (1) shall be made in accordance with the risk management strategy framed by the Board in this behalf.
- (3) The Department, or the prescribed Directorate, shall communicate to the assessee in writing about the selection referred to in clause (a), or clause (b), of sub-section (1).
- (4) However, the communication referred to in sub-section (3) shall not be served on the assessee after four months from the end of the financial year in which -
- (a) the return is furnished, if the return is selected under clause (a) of sub-section (1);
  - (b) the return has been treated as invalid, if the case is selected under sub-clause (i) of clause (b) of sub-section (1); or
  - (c) the notice was issued, if the case is selected under sub-clause (ii) of clause (b) of sub-section (1).
- (5) No information relating to the risk management strategy framed by the Board shall, regardless of anything to the contrary contained in any other Act for the time being in force, be revealed to any person.

### Notice for scrutiny assessment

- 157.**(1) For the purposes of making a scrutiny assessment under this Code, the Assessing Officer shall serve on any assessee a notice requiring him, on a date to be specified therein,-
- (a) to attend his office or to produce, or cause to be produced, any evidence, if any, on which the assessee may rely in support of the return or case;
  - (b) to produce, or cause to be produced, such accounts or documents (not relating to a period more than three years prior to the relevant financial year) as the Assessing Officer may require; or
  - (c) to furnish in writing, and verified in the prescribed manner, information in such form and on such point or matter (including a statement of all assets and

liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require.

- (2) However, the Assessing Officer shall obtain the previous approval of the Joint Commissioner before requiring the assessee to furnish the statement of all his assets and liabilities not included in the accounts for the relevant financial year.
- (3) The Assessing Officer may make such inquiry, as he considers necessary, for the purposes of obtaining full information in respect of tax bases of any person for the relevant financial year.
- (4) For the purposes of this section an assessee means-
  - (a) an assessee whose return, or case, has been selected for scrutiny assessment under section 156; or
  - (b) an assessee who has been served with a notice under section 166.

### Special Audit

- 158.**(1) The Assessing Officer may direct the assessee to get his accounts audited by an accountant, if at any stage of the proceeding, he is of the opinion that, having regard to the nature and complexity of the accounts of the assessee and the interests of revenue, it is necessary to do so .
- (2) The Assessing Officer shall not issue any direction under sub-section (1) unless the assessee has been given a reasonable opportunity of being heard and prior approval of the Chief Commissioner or Commissioner has been obtained.
  - (3) The provisions of sub-section (1) shall have effect regardless of the fact that the accounts of the assessee have been audited under any other law for the time being in force or otherwise.
  - (4) The accountant shall, for the purposes of sub-section (1), be nominated by the Chief Commissioner or Commissioner.
  - (5) The accountant shall furnish a report of the audit referred to in sub-section (1) in the prescribed form duly signed and verified by him and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.
  - (6) The accountant shall furnish the report referred to in sub-section (5) within the time allowed by the Assessing Officer.
  - (7) The Assessing Officer may extend the time allowed under sub-section (6) by such further period or periods as he thinks fit, for reasons to be recorded in writing.
  - (8) However, the aggregate of the period allowed under sub-section (6) and the further period or periods allowed under sub-section (7) shall not exceed one hundred and eighty two days from the date on which the direction under sub-section (1) is received by the assessee.
  - (9) The accountant shall furnish the report referred to in sub-section (5) to the Assessing Officer and a copy of the same to the assessee.
  - (10) The remuneration of the accountant and other expenses of any audit under sub-section (1) shall be determined and paid by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed.

### Determination of value of assets

- 159** (1) The Assessing Officer may, for the purposes of assessment, require a Valuation Officer to make and report to him an estimate of the value of any asset, investment or expenditure.
- (2) In pursuance to a reference made under sub-section (1), the Valuation Officer shall, for the purpose of estimating the value of the asset, investment or expenditure, and subject to the rules in this behalf, have all the powers to-

- (a) enter any land, building or other place belonging to, or occupied by, the person in connection with whose assessment the reference has been made;
  - (b) require any person in charge of, or in occupation or possession of, the land, building or other place to afford him the necessary facility to survey or inspect the land, building or other place;
  - (c) inspect any asset in respect of which the reference has been made;
  - (d) inspect any books of account, document or record which may be relevant for the purpose of making the estimate of the value of the asset, investment or expenditure, in respect of which the reference has been made;
  - (e) gather any other information relating to the asset, investment or expenditure, which may be relevant for the purposes of estimating the value.
- (3) The Valuation Officer shall, by order in writing, estimate the value of the asset, investment or expenditure after taking into account,-
    - (a) such evidence as the assessee may produce; and
    - (b) the material in his possession, in respect of which an opportunity of being heard has been provided to the assessee.
  - (4) The Valuation Officer may estimate the value of the asset, investment or expenditure to the best of his judgement, if the assessee does not cooperate or comply with his direction.
  - (5) The Valuation Officer shall serve a copy of his estimate under sub-section (3) or sub-section (4), as the case may be, on the Assessing Officer and the assessee.
  - (6) The Assessing Officer shall, on receipt of the report of the Valuation Officer, proceed to compute the tax bases of the assessee in conformity with the value estimated by the Valuation Officer.

### **Determination of arm's length price**

- 160.(1) The Transfer Pricing Officer may select any international transaction for the purposes of determining the arm's length price in relation to the transaction.
- (2) The selection referred to in sub-section (1) shall be made in accordance with the risk management strategy framed by the Board in this behalf.
- (3) The Transfer Pricing Officer shall communicate to the assessee in writing about the selection of the transaction entered into by him.
- (4) However, the communication, referred to in sub-section (3), shall not be served on the assessee after two months from the end of the financial year in which the report is furnished to, or the information about the transaction is received by, the Transfer Pricing Officer.
- (5) The Transfer Pricing Officer shall also serve a copy of the communication referred to in sub-section (2) to the Assessing Officer within seven days from the date on which the communication is sent to the assessee.
- (6) The Transfer Pricing Officer may, upon selection under sub-section (1), serve on the assessee a notice requiring him, on a date to be specified therein,-
  - (a) to attend his office or to produce, or cause to be produced, any evidence, if any, on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction; or
  - (b) to produce, or cause to be produced, such accounts or documents as the Transfer Pricing Officer may require.
- (7) The Transfer Pricing Officer shall determine the arm's length price in relation to the international transaction in accordance with the provisions of section 106 after taking into account,-
  - (a) such evidence as the assessee may produce; and



- (b) the material in his possession, in respect of which an opportunity of being heard has been provided to the assessee.
- (8) The Transfer Pricing Officer may determine the arm's length price in relation to the international transaction to the best of his judgement, if the assessee does not cooperate or comply with his direction.
- (9) The Transfer Pricing Officer shall serve a report of his determination under sub-section (7) or sub-section (8), as the case may be, on the Assessing Officer and the assessee.
- (10) No determination under sub-section (7) or sub-section (8) shall be made, or report of such determination served as required by sub-section (9), after forty-two months from the end of the financial year in which the international transaction is entered into.
- (11) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all, or any, of the powers specified in section 138 or section 144.
- (12) No information relating to risk management strategy framed by the Board shall, regardless of anything to the contrary contained in any other Act for the time being in force, be revealed to any assessee or any member of the public.

### **Determination of an impermissible avoidance arrangement and consequences thereof.**

- 161.**(1) The Commissioner shall, for the purposes of determining the consequences under section 112, serve on the assessee a notice requiring him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars-
- (a) which may be required for the purposes of determining the consequences; or
  - (b) on which the assessee may rely in support of his claim that the provisions of section 112 are not applicable to his case.
- (2) On the day specified in the notice issued under sub-section (1), or as soon afterwards as may be, the Commissioner shall, by an order in writing, determine the consequences, if any, under section 112 after,-
- (a) hearing such evidence and after taking into account such particulars as the assessee may produce; and
  - (b) taking into account all relevant material which he has gathered.
- (3) Upon the determining the consequences, if any, the Commissioner shall issue direction to the assessing officer to make such adjustment to the total income, or the tax liability, in the case of the assessee and any other party to the arrangement, that are necessary, appropriate and consistent.
- (4) No order under sub-section (2) shall be issued after twelve months from the end of the month in which the notice under sub-section (1) is issued.

### **Assessment**

- 162.**(1) The Assessing Officer shall, in pursuance to a notice issued under sub-section (1) of section 157, by an order in writing, make a scrutiny assessment of the tax bases of the assessee after taking into account,
- (a) the evidence furnished by the assessee;
  - (b) the report of the Valuation Officer;
  - (c) the order of the Transfer Pricing Officer;
  - (d) the direction of the Commissioner under section 161; and
  - (e) the material in his possession, in respect of which an opportunity of being heard has been provided to the assessee.



- (2) The Assessing Officer shall, on the basis of the scrutiny assessment, determine the sum payable by, or refundable to, the assessee after adjusting the sum paid by, or refunded to, the assessee in pursuance to the intimation issued under sub-section (2) of section 155.
- (3) The Assessing Officer shall, regardless of anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereinafter in this section referred to as the draft order) to the assessee if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee.
- (4) On receipt of the draft order, the assessee shall, within thirty days of the receipt by him of the draft order,-
  - (a) file his acceptance of the variations to the Assessing Officer; or
  - (b) file his objections, if any, to such variation to,-
    - (i) the Dispute Resolution Panel; and
    - (ii) the Assessing Officer.
- (5) The Assessing Officer shall complete the assessment on the basis of the draft order, if-
  - (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or
  - (b) no objections are received within the period specified in sub-section (2).
- (6) The Assessing Officer shall, notwithstanding anything contained in section 146, pass the assessment order under sub-section (3) within one month from the end of the month in which,-
  - (a) the acceptance is received; or
  - (b) the period of filing of objections under sub-section (2) expires.
- (7) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete the assessment within one month from the end of the month in which the direction is received notwithstanding anything to the contrary contained in section 146.
- (8) No opportunity of being heard shall be required to be provided to the assessee for the purposes of sub-section (7).
- (9) The provisions of sub-section (3) shall not apply if the variation is less than twenty five hundred thousand rupees.

### **Best judgement assessment**

- 163.**(1) The Assessing Officer shall make the assessment of the tax base to the best of his judgement, if-
- (a) the assessee fails to,-
    - (i) comply with all the terms of a notice issued under sub-section (1) of section 157;
    - (ii) comply with a direction issued under section 158;or
    - (iii) make the return in response to notice under section 166;or
  - (b) the assessee fails to regularly follow the method of accounting provided in sub-section (1), or the accounting standards notified under sub-section (2), of section 85;or
  - (c) he is not satisfied about the correctness or completeness of the accounts of the assessee.
- (2) The Assessing Officer shall, in making the assessment under sub-section (1), take into account all relevant material which he has gathered or is available on record.

- (3) The Assessing Officer shall, before making the assessment under sub-section (1), provide the assessee an opportunity of being heard by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgement.
- (4) It shall not be necessary to give an opportunity under sub-section (3) before the making of an assessment under this section, in a case where a notice under section 157 has been issued.

#### Directions for assessment by Joint Commissioner or Commissioner

- 164.**(1) A Joint Commissioner may, on a reference being made to him by the Assessing Officer or on his own motion, call for and examine the record of any proceeding in which a scrutiny assessment is pending, if he considers it necessary or expedient so to do.
- (2) The Joint Commissioner may issue such direction as he thinks fit for the guidance of the Assessing Officer so as to enable him to complete the scrutiny assessment referred to in sub-section (1).
  - (3) The Joint Commissioner may seek the direction of the Commissioner for the purposes of issuing direction to the Assessing Officer so as to enable the Assessing Officer to complete the scrutiny assessment referred to in sub-section (1).
  - (4) The Commissioner may, on a reference being made to him under sub-section (3) or on his own motion, call for and examine the record of any proceeding in which a scrutiny assessment is pending, if he considers it necessary or expedient so to do.
  - (5) The Commissioner may issue such direction as he thinks fit for the guidance of the Assessing Officer, or the Joint Commissioner, so as to enable the assessing officer to complete the scrutiny assessment.
  - (6) The Commissioner or Joint Commissioner shall not issue any direction which are prejudicial to the assessee unless an opportunity of being heard is given to the assessee.
  - (7) Any direction issued under this section shall be binding on all the income-tax authorities subordinate to the authority issuing the direction.
  - (8) The reference to Joint Commissioner in sub-section (1) and sub-section (2) shall be construed as a reference to Commissioner, if the Joint Commissioner is the Assessing Officer.
  - (9) For the purposes of this section, any direction as to the lines on which an investigation connected with the scrutiny assessment should be made shall not be a direction prejudicial to the assessee.

#### Direction for assessment by Dispute Resolution Panel

- 165**(1) The Dispute Resolution Panel may, in a case where any objection is received under sub-section (2),-
- (a) call for and examine the record of any proceeding relating to the draft order;
  - (b) make such further enquiry, as it thinks fit; or
  - (c) cause any further enquiry to be made by any income tax authority and report the result of the same to it.
- (2) The Dispute Resolution Panel shall, in the case referred to in sub-section (1), issue such direction, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the scrutiny assessment.
  - (3) The Dispute Resolution Panel shall issue the direction referred to in sub-section (2), after considering the,-

- (a) draft order;
  - (b) objections filed by the assessee;
  - (c) evidence furnished by the assessee;
  - (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
  - (e) records relating to the draft order;
  - (f) evidence collected by, or caused to be collected by, it; and
  - (g) result of any enquiry made by, or caused to be made by, it.
- (4) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order.
  - (5) The Dispute Resolution Panel shall not set aside any proposed variation or issue any direction under sub-section (2) for further enquiry and passing of the assessment order.
  - (6) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority.
  - (7) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
  - (8) No direction under sub-section (2) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to their interest.
  - (9) No direction under sub-section (2) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.
  - (10) The Board may make rules for the efficient functioning of the Dispute Resolution Panel with a view to expeditiously dispose of the objections filed, under sub-section (2), by the eligible assessee.

### Reopening of assessment

- 166.(1) The Assessing Officer shall, for reasons to be recorded in writing, reopen a case for reassessment, if he has reason to believe that any tax base liable to tax has escaped assessment for the relevant financial year.
- (2) The Assessing Officer shall, for reopening a case, serve on the assessee a notice requiring him to furnish, within thirty days, a return of tax bases for any financial year.
- (3) The notice issued under sub-section (2) shall specify the reasons for reopening the case.
- (4) The tax base liable to tax shall be deemed to have escaped assessment in the following cases, namely:-
  - (a) where the tax base for the relevant financial year exceeds the maximum amount not liable to tax but,-
    - (i) the return of the tax base has not been furnished;
    - (ii) no notice has been issued under section 151 or section 152; and
    - (iii) the time limitation for issuing such notice has expired;
  - (b) where a return of tax bases has been furnished by the assessee, but -
    - (i) no communication has been received under section 156;
    - (ii) the time limitation for issuance of such communication has expired; and
    - (iii) the assessee has understated the tax bases, or has claimed excessive loss, deduction, allowance or relief, in the return;
  - (c) where a scrutiny assessment has been made under section 162 or section 163, but,-
    - (i) the tax bases liable to tax has been under-assessed;

- (ii) the tax bases have been assessed at too low a rate;
  - (iii) the tax bases have been made the subject of relief to which the assessee is not entitled to, under this Code;
  - (iv) excessive loss or depreciation allowance or any other allowance under this Code has been computed;
  - (v) the assessment has not been made in accordance with any decision, prejudicial to the assessee, rendered by, -
    - (A) Appellate Tribunal, National Tax Tribunal, High Court or Supreme Court in the case of the assessee or any other person under this Code, the Income-tax Act, 1961; or
    - (B) a court in the case of the assessee or any other person under any other law;
  - (vi) the computation or assessment has not been made in accordance with any order, direction, instruction or circular issued by the Board;
  - (vii) the computation or assessment has not been made by the Assessing Officer in accordance with any order, direction, instruction or circular issued, before making of the assessment, by an authority to whom the Assessing Officer is subordinate; or
  - (viii) any objection has been raised, or observation made, by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of this Code or the Income-tax Act, 1961;
- (d) where search and seizure operation has been carried out under section 139, or material has been obtained in pursuance to a requisition under section 140, in the case of the person;
- (e) where any material which has been seized, or obtained in pursuance to a requisition, has a bearing on the determination of the tax bases of a person other than the person referred to in clause (d).
- (5) The person in receipt of notice issued under sub-section (2) shall furnish the return within thirty days from the date of receipt of the notice and the return shall be furnished and verified, in the prescribed form and manner and setting forth such other particulars as may be prescribed.
- (6) The notice under sub-section (2) shall be issued,-
- (a) for the seven financial years immediately preceeding the financial year in which the search and seizure operation has been carried out or the material has been obtained; and
  - (b) within seven years from the end of the relevant financial year in any other case.
- (7) However, the notice under sub-section (2) for any financial year may be issued at any time, if-
- (a) the reassessment is to be made in consequence of, or to give effect to, any finding, or direction, contained in an order passed,-
    - (i) by any authority or Court in any proceeding under this Code by way of appeal, reference or revision; or
    - (ii) by a Court in any proceeding under any other law; and
  - (b) the period referred to in sub-section (6) for issue of such notice had not expired at the time the order, which was the subject-matter of appeal, reference or revision was made.
- (8) No notice under sub-section (2) shall be issued by the Assessing Officer unless the Chief Commissioner or Commissioner,-

- (a) is satisfied on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice; and
  - (b) he grants his approval for issue of such notice by the Assessing Officer.
- (9) Any assessment proceeding relating to any financial year falling within the period of seven financial years referred to in sub-section (6) shall abate if it is pending on the date of the initiation of the search, or on the date of obtaining the material, as the case may be.
- (10) The provisions of this section shall also apply in the case of any other person, as if a search and seizure operation has been carried out under section 139 in his case, if any material which has a bearing on the determination of the tax bases of such other person, has been-
- (a) seized in the course of search and seizure under section 139 in the case of the person referred to in clause (d) of sub-section (4); or
  - (b) obtained in pursuance to the requisition under section 140 in the case of the person referred to in clause (d) of sub-section (4).
- (11) On receipt of a return in pursuance to a notice under sub-section (2), or after the expiry of time prescribed for furnishing the return in pursuance to such notice, the Assessing Officer shall, by an order in writing, make the reassessment of the total income and the provisions of sections 157 to 164 shall apply accordingly.
- (12) For the purposes of this section,-
- (a) date of initiation of search, or the date of obtaining the material under sub-section (9) to sub-section (11) shall be construed as reference to the date of receiving the material by the assessing officer having jurisdiction over such other person;
  - (b) reassessment shall include any other part of the tax base liable to tax which has escaped assessment and which comes to the notice of the assessing officer subsequently in the course of reassessment proceeding regardless that the fact of such part of the tax base having escaped assessment has not been included in the reasons recorded for re-opening under sub-section (1); and
  - (c) reopening a case for reassessment shall include opening a case for assessment where return for a tax base has not been furnished before the issue of notice under sub-section (2).

### Rectification of mistake

- 167.**(1) An income-tax authority may amend any order passed, or intimation issued, by it under this Code so as to rectify any mistake apparent from the record.
- (2) Subject to sub-section (4), no amendment under this section shall be made after two years from the end of the financial year in which the order sought to be amended was passed.
- (3) For the purposes of this section, a mistake in the order, or intimation, sought to be amended shall, without prejudice to the generality of sub-section (1), be deemed to be apparent from the record, if the order, or intimation, is not in accordance with-
- (a) the decision of the Supreme Court, or the jurisdictional High Court, rendered subsequent to the passing of such order or intimation;
  - (b) the amendment to this Code made subsequent to the passing of such order or intimation;
  - (c) any finding, or direction, contained in an order passed in the case of the assessee for any other financial year by -

- (i) any authority, or Court, in any proceeding under this Code by way of appeal, reference or revision; or
- (ii) a Court in any proceeding under any other law in so far as it has a bearing on the liability under this Code; or
- (d) any finding, or direction, contained in an order passed in the case of any other assessee for any financial year by-
  - (i) any income-tax authority under the Code; or
  - (ii) by a court in any proceeding under any law in so far as it has a bearing on the liability under this Code.
- (4) The income-tax authority shall not make any amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, unless the authority concerned has given to the assessee a reasonable opportunity of being heard.
- (5) The income-tax authority concerned may make an amendment,-
  - (a) on its own motion; or
  - (b) on the application made to it by the assessee or, as the case may be, by the Assessing Officer.
- (6) Any application received by an authority for amendment of an order shall be decided within a period of six months from the end of the month in which such application is received by it, failing which an order shall be deemed to have been made rejecting such application.
- (7) In a case where the order has been decided in appeal or revision, the power of the authority to amend the order, or intimation, shall be restricted to matters other than those decided in appeal or revision.
- (8) Without prejudice to the generality of the foregoing provisions, mistake apparent from record in relation to an order, or intimation, shall include a mistake which becomes apparent under any prescribed circumstances arising after the date of passing of the order or intimation.
- (9) The Board may prescribe the date from which the period of two years specified under sub-section (2) shall be reckoned for the purposes of amendment.

### Notice of demand

- 168.** Any sum payable in consequence of any order made, or intimation issued, under this Code shall be demanded by an income-tax authority by serving upon the assessee a notice of demand in the prescribed form and manner.

### Time limits for completion of assessment or reassessments

- 169.**(1) The Assessing Officer shall, subject to the provisions of the section, not make -
- (a) any order of assessment under section 162 or section 163 after the expiry of -
    - (i) twenty-one months from the end of the financial year in which the return is furnished;
    - (ii) twenty-one months from the end of the financial year in which a notice under section 151 or section 152 was served, if no return is furnished;
  - (b) any order of reassessment under section 166 after the expiry of twenty-one months from the end of the financial year -
    - (i) in which the last of the authorisations was executed in the case of a person where search and seizure operation was carried out under section 139 or the material was obtained in pursuance to a requisition under section 140;
    - (ii) in which any material belonging to the person referred to in section 185 is handed over to his Assessing Officer under that sub-section;
    - (iii) in which the notice under section 166 is served, in any other case;

- (c) any order of assessment in pursuance of an order under section 186 or section 190, setting aside or cancelling an assessment, after the expiry of twelve months from the end of the financial year in which the order is received by the Commissioner;
  - (d) any order of assessment in pursuance of an order under section 194, after the expiry of twelve months from the end of the financial year in which the order is passed under that section;
  - (e) any order of assessment, reassessment or recomputation in pursuance to the revival of any proceeding under this Code, after the expiry of twelve months from the end of the financial year in which the order of revival of the proceedings is received by the Commissioner.
- (2) The assessing officer shall, in a case where an international transaction has been selected under section 160, not make an order of assessment for the financial year after the expiry of the period of twenty one months referred to in sub-section (1) or three months from the end of the month in which the report under that section is received, whichever is later.
  - (3) The provisions of sub-section (1) and sub-section (2) shall not apply in respect of assessment, reassessment or recomputation to be made in consequence of, or to give effect to, any finding or direction contained in any order-
    - (a) under section 186, section 190, section 192 or section 193; or
    - (b) of any court in a proceeding otherwise then by way of appeal or reference under this Code.
  - (4) In computing the period of limitation for the purpose of sub-section (1) and sub-section (2), the following period or time shall not be included, namely:-
    - (a) the period commencing the date on which the application for Advance Pricing Arrangement is filed by the assessee and ending with -
      - (i) the date on which the order rejecting the application is received by the Commissioner; or
      - (ii) the date on which the copy of the Advance Pricing Agreement, entered under section 107, is received by the Commissioner;
    - (b) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under section 137;
    - (c) the period during which the assessment proceeding is stayed by an order or injunction of any court;
    - (d) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 158 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section;
    - (e) the period commencing from the first day of the month in which the notice under section 161 is served on the assessee and ending with the last day of the month in which the order under that section is passed;
    - (f) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 152 and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (9) of that section; or
    - (g) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 152 and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (13) of that section.
  - (5) The period of limitation available to the Assessing Officer for making an order of



assessment, reassessment or recomputation, shall not be less than sixty days, if the period immediately after the exclusion of the time or period specified in sub-section (4) is less than sixty days.

- (6) For the purpose of clause (c) and clause (d) of sub-section (1),-
- (a) assessment of any income for a financial year shall be deemed to have been made in pursuance of an order under section 186, section 190 or section 194 for that financial year, if the order under those sections relates to another financial year and the income is excluded from the total income of the assessee for such other financial year; or
  - (b) assessment of any income in the case of an assessee shall be deemed to have been made in pursuance of an order under section 186, section 190 or section 194 for that assessee, if the order under those sections relates to another assessee and the income is excluded from the total income of such other assessee.

### **C. - Procedure for assessment in special cases**

#### **Representative assessee**

- 170.**(1) For the purposes of this Code, “representative assessee” in respect of an assessee means-
- (a) the agent of a non-resident, if the assessee is a non-resident;
  - (b) the guardian, or manager, of a minor, lunatic or idiot, if the assessee is a minor, lunatic or idiot;
  - (c) the Court of Wards, the Administrator-General, the Official Trustee, any receiver or manager (including any person, whatever be his designation, who manages property on behalf of the assessee) appointed by, or under, any order of a court, if such person receives, or is entitled to receive, income on behalf, or for the benefit, of the assessee;
  - (d) a trustee appointed under an oral trust, or a trust declared by a duly executed instrument in writing whether testamentary or otherwise, if the assessee is a trust;
  - (e) the legal representative, or the executor, if the assessee dies;
  - (f) a participant, or the legal representative of the deceased participant, in the case of dissolution of an unincorporated body; and
  - (g) the liquidator appointed under section 448, or section 490, of the Companies Act, 1956 in the case of a company.
- (2) The “agent” in relation to a non-resident includes -
- (a) any person in India -
    - (i) who is employed by, or on behalf of, the non-resident;
    - (ii) who has any business connection with the non-resident;
    - (iii) from, or through, whom the non-resident is in receipt of any income, whether directly or indirectly; or
    - (iv) who is the trustee of the non-resident; and
  - (b) any other person who has acquired, by means of transfer, a capital asset in India from the non-resident.
- (3) A broker in India who, in respect of any transactions, does not deal directly with, or on behalf of, a non-resident principal but deals with, or through, a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:-
- (a) the transactions are carried on in the ordinary course of business through the first mentioned broker; and



- (b) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.
- (4) The “executor” in relation to the estate of a deceased person means -
  - (a) an individual, if such individual is the only executor; or
  - (b) an association of persons comprising all the executors, if there are more than one executor.
- (5) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

**Rights and obligations of a representative assessee**

- 171.**(1) Every representative assessee shall, in his representative capacity, be liable to assessment only in respect of the tax base of the person represented by him.
- (2) Every representative assessee shall be subject to the same duties, responsibilities and liabilities as if the tax bases accrued to him or received, or owned, by him.
  - (3) The tax on tax bases of the representative assessee shall be levied upon, and recovered from, him in the manner, and to the extent, as it would have been leviable upon, and recoverable from, the person represented by him.
  - (4) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain a sum equal to his estimated liability under this Chapter out of the money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal).
  - (5) The representative assessee, or the person referred to in sub-section (4), in the event of disagreement between him and the principal as to the amount to be so retained, may apply to the Assessing Officer for a certificate stating the amount to be so retained pending final settlement of the liability.
  - (6) Upon receipt of the application under sub-section (5), the Assessing Officer shall issue, within one month from the date of receipt of the application, the certificate stating the amount to be retained by the representative assessee or the person.
  - (7) The certificate issued under sub-section (6) shall be the warrant for retaining the amount specified therein by the representative assessee or the person.
  - (8) The amount recoverable from the representative assessee, or the person, at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which the representative assessee, or the person, may have additional assets of the principal at that time.
  - (9) Every representative assessee who, as such, pays any sum under this Code, shall be entitled to -
    - (a) recover the sum so paid from the principal; or
    - (b) retain an amount equal to the sum so paid out of any moneys that may be in his possession, or may come to him, in his representative capacity.
  - (10) In the case of a representative assessee referred to in clause (e), clause (f) or clause (g) of sub-section (1) of section 170,-
    - (a) any proceeding taken against the principal before his death or its dissolution or the appointment of the liquidator, shall be deemed to have been taken against the representative assessee and may be continued against him from the stage at which it stood on the date of the death or dissolution or the appointment; and
    - (b) any proceeding which could have been taken against the principal may be taken against the representative assessee, if the principal had survived or existed or the liquidator had not been appointed.

**Direct assessment or recovery not barred**

- 172.** Nothing in the foregoing sections in this Chapter shall prevent -
- (a) the direct assessment of the principal; or
  - (b) the recovery of any sum payable under this Code from the principal.

**Remedy against property in cases of representative assessee**

- 173.** The Assessing Officer shall have the same remedy against all property of any kind vested in, or under the control or management of, any representative assessee as he would have against the property of the principal, in as full and ample a manner, whether the demand is raised against the representative assessee or against the principal direct.

**Assessment upon business reorganisation**

- 174.**(1) The assessment of the predecessor and the successor shall, in respect of the financial year in which the business reorganisation is undertaken, be made in the manner provided in this section.
- (2) The predecessor shall be assessed in respect of the income for the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation.
  - (3) The successor shall be assessed in respect of the income for the period beginning with the date of business reorganisation and ending on the last day of the financial year.
  - (4) Any proceeding under this Code taken against the predecessor shall be deemed to have been taken against the successor and may be continued against the successor from the stage at which it stood on the date of the business reorganisation, if the predecessor does not exist or cannot be found.
  - (5) Any proceeding under this Code may be taken against the successor, which could have been taken against the predecessor if he existed or was found.

**Assessment after partition of a Hindu undivided family**

- 175.**(1) A Hindu family, hitherto assessed as undivided, shall be deemed, for the purposes of this Code, to continue to be a Hindu undivided family, except where, and in so far as, a finding of partition has been given under this section in respect of the Hindu undivided family.
- (2) The Assessing Officer shall -
    - (a) make an enquiry into the claim of partition made by, or on behalf of, any member of a Hindu family, hitherto assessed as undivided, at the time of making the assessment;
    - (b) give notice of the enquiry to all members of the family; and
    - (c) record a finding as to whether there has been a total, or partial, partition of the joint family property and, if there has been such a partition, the date on which it has taken place;
  - (3) The tax bases of the Hindu family, hitherto assessed as undivided, shall, for the financial year in which the partition took place, be the tax bases in respect of the period upto the date of partition, as if no partition had taken place.
  - (4) Each member, or group of members, of the Hindu family, hitherto assessed as undivided, shall be jointly and severally liable for tax on the tax bases of any financial year or period, upto the date of partition, and shall be recovered from him, or them, accordingly.
  - (5) For the purposes of this section, the several liability of any member, or group of members, shall be computed according to the portion of the joint family property allotted to him, or to them, upon the partition.

- (6) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period upto date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.
- (7) For the purposes of this Code, no claim of partial partition of a family shall be enquired into, or partition recognised, and -
  - (a) the family shall continue to be assessed under this Code as if no partial partition had taken place; and
  - (b) the liability of the family and its members under this Code, before or after the partial partition, shall remain the same.
- (8) In this section,—
  - (a) “**partition**” means—
    - (i) where the property admits of a physical division, such division of the property, but a physical division of the income without a physical division of a property producing the income shall not be deemed to be a partition; or
    - (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;
  - (b) “**partial partition**” means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

#### Assessment of non-resident in respect of the shipping business

- 176.**(1) The assessment of the income from the business of operation of ships (including an arrangement such as slot charter, space charter or joint charter) shall, regardless of anything to the contrary contained in any other provisions of this Code, be made in accordance with the provisions of this section.
- (2) The master of a ship belonging to, or chartered by, a non-resident shall, before the departure of the ship, furnish to the Assessing Officer a return of the full amount of transportation charges accrued to, or received by, the owner or charterer, since the last arrival of the ship in that port.
- (3) The requirement of furnishing the return shall be deemed to have been complied with, if -
  - (a) the Assessing Officer is satisfied that-
    - (i) it is not possible for the master of the ship to furnish the return before the departure of the ship from the port; and
    - (ii) the master of the ship has made satisfactory arrangements for furnishing the return and payment of tax; and
  - (b) the return is furnished within thirty days of the departure of the ship by any person authorized by the master of the ship.
- (4) On receipt of the return, the Assessing Officer shall -
  - (a) assess the income referred to in sub-section (1), after calling for such documents as he deems fit; and
  - (b) determine the sum payable as tax thereon at the rates applicable to the total income of a foreign company.
- (5) The sum determined under sub-section (4) shall be payable by the master of the ship or any other person authorised by him.
- (6) A port clearance shall not be granted to the ship until the Commissioner of Customs, or other officer duly authorised to grant it, is satisfied that the tax assessable under

this section has been duly paid or that satisfactory arrangements have been made for the payment.

- (7) Nothing in this section shall prevent the assessment of the income, referred to in sub-section (1), for the relevant financial year of the owner, or charterer, of the ship in accordance with the other provisions of this Code, at his option.
- (8) Any payment of tax made under this section shall be treated as advance tax, in case an assessment is made as envisaged in sub-section (7).

### **Assessment of persons leaving India**

- 177.**(1) An Assessing Officer may charge any individual, in respect of his liability to pay tax relating to the tax bases for part of a financial year, in that financial year, if-
- (a) it appears to him that the individual may leave India during the financial year or shortly after its expiry; and
  - (b) has no intention of returning to India.
- (2) The part of a financial year, referred to in sub-section (1), shall be the period beginning with the first day of the financial year and ending with the probable date of his departure from India.
- (3) For the purposes of charging the individual, as required by sub-section (1), the Assessing Officer may require the individual to furnish the returns of tax bases within the time specified therein, which shall not be less than seven days.
- (4) The Assessing Officer shall, regardless of anything to the contrary contained in any other provisions of this Code, also require the individual to furnish the returns of tax bases, within the time specified therein, which shall not be less than seven days,-
- (a) for the financial year for which the due date for filing of return has not expired;and
  - (b) for such other financial years for which no return of tax bases has been filed which was otherwise required to be filed.
- (5) The Assessing Officer shall, upon receipt of the return, or after the expiry of the time allowed for furnishing the return under sub-section (3) or sub-section (4), proceed to make assessment in accordance with the provisions of this Code in so far as they apply.

### **Assessment of entity formed for a particular event or purpose**

- 178.**(1) An Assessing Officer may, where it appears to him that an unincorporated body formed for a particular event or purpose is likely to be dissolved in the financial year or shortly after its expiry, charge to tax in that financial year the tax bases of the unincorporated body for the period from the beginning of the financial year up to the likely date of its dissolution.
- (2) The provisions of section 177 shall apply to any proceeding under this section as they apply in the case of a person leaving India.

### **Assessment of persons likely to transfer property to avoid tax**

- 179.**(1) An Assessing Officer may, where it appears to him that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under this Code, charge to tax in that financial year the tax bases of such person for the period from the beginning of the financial year to the date when the Assessing Officer commences proceedings under this section.
- (2) The provisions of section 177 shall apply to any proceeding under this section as they apply in the case of a person leaving India.

**Assessment of firm in case of change in its constitution**

- 180.**(1) The Assessing Officer shall, in a case where a change has occurred in the constitution of an unincorporated body, make only one assessment in respect of the entire financial year in which the change has occurred.
- (2) For the purposes of this section, a change in the constitution of an unincorporated body is said to have taken place, if-
- (a) one, or more, of the participants ceased to be participants;
  - (b) one, or more, new participants are admitted; or
  - (c) all the participants continue with a change in their respective shares or in the shares of some of them.
- (3) The provisions of this section shall not apply, if the change in constitution is on account of the death of a participant or on account of the retirement of all the participants.

**Assessment on the retirement or death of the participant**

- 181.**(1) The Assessing Officer shall make separate assessments on any two unincorporated bodies, if-
- (a) one unincorporated body succeeds another unincorporated body; and
  - (b) the succession is by virtue of retirement of all participants in the unincorporated body or death of any of the participants.
- (2) The separate assessments shall be made in accordance with the provisions of section 174 as if-
- (a) the unincorporated body, succeeding the other unincorporated body, is the successor; and
  - (b) the unincorporated body being succeeded is the predecessor.

**Assessment of a deductor or collector**

- 182.**(1) The Assessing Officer shall assess every return filed under section 199 or section 202, as if it were a return of tax bases referred to in section 148, and all the other provisions of this Code shall, as far as may be, apply accordingly.
- (2) The Assessing Officer shall, in a case where a person has failed to file the return under section 199 or section 202, issue a notice to the person requiring him to furnish the return within the time specified therein and all the other provisions of this Code shall, as far as may be, apply as if it were a return under sub-section (1).

**D. - Appeals and revision**

**Appeal to Commissioner (Appeals)**

- 183.**(1) An aggrieved assessee may appeal to the Commissioner (Appeals) against the following:-
- (a) any order passed by any income-tax authority below the rank of the Commissioner; and
  - (b) an intimation issued by the Department.
- (2) A person may appeal to the Commissioner (Appeal) for a declaration that no tax was deductible by him on any income payable by him to a non-resident, if the person -
- (a) is required to bear the liability in respect of the tax deductible on the income under any agreement or other arrangement; and
  - (b) has paid the taxes to the credit of the Central Government.
- (3) No appeal shall lie under this section against the following orders, namely:-
- (a) an interim order passed by an income-tax authority in any proceedings under this Code;

- (b) an order passed by an income-tax authority with the approval of the Chief Commissioner; and
- (c) an order passed by an Assessing Officer in pursuance of the direction of the Dispute Resolution Panel.

### Form of appeal and limitation

- 184.**(1) Every appeal under section 183 shall be in the prescribed form and shall be verified in the prescribed manner.
- (2) Every appeal filed by an assessee under section 183 shall be accompanied by a prescribed fee.
  - (3) The appeal filed by an assessee under section 183 shall be presented within thirty days of the following:-
    - (a) the date of service of the notice of demand, if the appeal relates to any order or intimation in pursuance of which such notice of demand is issued;
    - (b) the date on which the period of six months for disposing of the application expired, if the appeal relates to not disposing of the application for rectification under section 167;
    - (c) the date of payment of the tax to the Central Government, if the appeal is filed under sub-section (2) of section 183; and
    - (d) the date on which the communication of the order sought to be appealed against is served, if the appeal relates to any other matter.
  - (4) The appeal filed by the Commissioner under section 183 shall be presented within three months from the end of the month in which the assessment order, to which the appeal relates, is passed.
  - (5) The Commissioner (Appeals) may admit an appeal after the expiration of the period specified in sub-section (3), if-
    - (a) he is satisfied that the appellant had sufficient cause for not presenting it within that time; and
    - (b) the delay in filing the appeal does not exceed one year.
  - (6) No appeal under this section shall be admitted unless, at the time of filing of the appeal,-
    - (a) the assessee has paid the tax due in accordance with the return furnished;
    - (b) the assessee has paid an amount equal to the amount of advance-tax which was payable by him, if no return has been filed by the assessee.
  - (7) The Commissioner (Appeals) may, on an application made by the assessee, exempt him from the operation of the provisions of clause (b) of sub-section (6) for any good and sufficient reason to be recorded in writing.

### Procedure in appeal

- 185.**(1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and the Assessing Officer against whose order the appeal is preferred.
- (2) The following shall have the right to be heard at the hearing of the appeal, namely:-
    - (a) the appellant, either in person or by an authorised representative;
    - (b) the Assessing Officer, either in person or by a representative.
  - (3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.
  - (4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit.
  - (5) The Commissioner (Appeals) may, during the proceedings before him, direct the Assessing Officer to make inquiry and report the result of the same to him on such points arising out of any new question of fact or law.

- (6) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.
- (7) The order of the Commissioner (Appeals), disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.
- (8) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under section 183.
- (9) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner.

### **Powers of the Commissioner (Appeals)**

- 186.**(1) In disposing of an appeal, the Commissioner (Appeals), shall have the following powers, namely:-
- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;
  - (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
  - (c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.
- (2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.
  - (3) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.
  - (4) In disposing of an appeal, the Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

### **Appellate Tribunal**

- 187.**(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Code.
- (2) A judicial member shall be a person-
    - (i) who has for at least ten years held a judicial office in the territory of India;
    - (ii) who has been a member of the Indian Legal Service and has held a post in Grade I of that Service, or any equivalent or higher post, for at least three years; or
    - (iii) who has been an advocate for at least ten years.
  - (3) An accountant member shall be a person-
    - (a) who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949; or
    - (b) who has been a member of the Indian Revenue Service and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.
  - (4) The Central Government may appoint one or more members of the Appellate Tribunal to be Vice-President or, as the case may be, Vice-Presidents thereof.



- (5) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.
- (6) The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.
- (7) The Senior Vice-President or a Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.
- (8) For the purpose of sub-section (2),-
  - (a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;
  - (b) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

### Appeals to the Appellate Tribunal

- 188.**(1) An aggrieved assessee may appeal to the Appellate Tribunal against the following:-
- (a) an order passed by a Commissioner (Appeals);
  - (b) an order passed under section 93;
  - (c) an order passed by an income-tax authority with the approval of the Chief Commissioner; and
  - (d) an order passed by an Assessing Officer in pursuance of the direction of the Dispute Resolution Panel.
- (2) The Commissioner may, if he objects to any order passed by a Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal against the order.
  - (3) Every appeal under sub-section (1), or sub-section (2), shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.
  - (4) The Assessing Officer or the assessee may, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, file a memorandum of cross-objection against any part of the order of the Commissioner (Appeals) within thirty days of the receipt of the notice, .
  - (5) The memorandum of cross objection shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
  - (6) The Appellate Tribunal may admit an appeal, or a memorandum of cross-objection, after the expiration of the period specified in sub-section (3) or sub-section (4), if-
    - (a) it is satisfied that the appellant had sufficient cause for not presenting it within that time; and
    - (b) the delay in filing the appeal does not exceed one year.
  - (7) An appeal, or the memorandum of cross-objection, to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner.
  - (8) The appeal by an assessee shall be accompanied by a fee of one thousand rupees.
  - (9) However, if the total income, in a case to which the appeal relates, as computed by the Assessing Officer is more than five hundred thousand rupees, the appeal shall be accompanied by a fee of one per cent. of the total income as computed, subject to a maximum of ten thousand rupees.



### Stay of demand by the Appellate Tribunal

- 189.**(1) An assessee may make an application to the Appellate Tribunal for stay of demand relating to the appeal filed by him and such application shall be accompanied by a fee of one thousand rupees.
- (2) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders on stay application as it deems fit.
- (3) The Appellate Tribunal shall not grant stay under sub-section (2) for a period of more than one hundred and eighty days from the date of passing the order for stay.
- (4) The Appellate Tribunal may extend the period of stay allowed under sub-section (2), if-
- (a) the assessee makes an application seeking further extension of the period of stay; and
- (b) the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee.
- (5) However, the aggregate of the period originally allowed under sub-section (2) and the period or periods extended sub-section (4) shall not, in any case, exceed three hundred and sixty-five days from the date of passing the order of stay under sub-section (2).
- (6) The Appellate Tribunal shall dispose of the appeal during the period of stay and where it fails to do so, the stay order shall stand vacated on the expiry of the period of stay allowed under sub-section (2) or the period or periods extended under sub-section (4), regardless of the fact that the delay in disposing the appeal is not attributable to the assessee.

### Orders of the Appellate Tribunal

- 190.**(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.
- (3) An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under sub-section (2) unless the Appellate Tribunal has allowed the assessee a reasonable opportunity of being heard.
- (4) The appellate Tribunal, where it is possible, may hear and decide the appeal within a period of two years from the end of the financial year in which the appeal is filed under section 188.
- (5) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.
- (6) The orders passed by the Appellate Tribunal shall be final, subject to the provisions of section 192.

### Procedure of the Appellate Tribunal

- 191.**(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.
- (2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.
- (3) The President or any other member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which

has been allotted to the Bench of which he is a member and which pertains to an assessee, not being a company or a non-resident, whose tax bases as computed by the Assessing Officer in the case does not exceed five lakh rupees.

- (4) The President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.
- (5) The President shall, on a reference received from the Board for the disposal of any particular case, constitute a Special Bench comprising of five members or more, two of whom shall necessarily be judicial members and two accountant members.
- (6) Any point shall, in a case where the members of a Bench differ in opinion on the point, be decided according to the opinion of the majority, if there is a majority.
- (7) The members of a Bench shall, in a case where they are equally divided in opinion on any point or points, state the point or points on which they differ and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal.
- (8) The point or points referred to in sub-section (7) shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.
- (9) Subject to the provisions of this Code, the Appellate Tribunal shall have powers to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the place at which the Benches shall hold their sittings.
- (10) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income-tax authorities under section 181.
- (11) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and section 228 of the Indian Penal Code and for the purpose of section 196 of the Indian Penal Code.
- (12) The Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973.

### **Appeals to the National Tax Tribunal**

- 192.**(1) An appeal shall lie to the National Tax Tribunal, from an order passed in appeal by the Appellate Tribunal.
- (2) The powers and functions of the National Tax Tribunal, and the procedure before it, shall be as set out in the National Tax Tribunal Act, 2005.
  - (3) The order passed by the National Tax Tribunal shall be final as per section 17 of the National Tax Tribunal Act, 2005 but for an appeal to the Supreme Court under section 24 of that Act.
  - (4) The Assessing Officer shall give effect to the order of the National Tax Tribunal on the basis of certified copy of the judgment delivered by the Tribunal in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Act, 2005.
  - (5) Tax shall be payable in accordance with the assessment made in any case notwithstanding that an appeal has been preferred to the National Tax Tribunal.

### **Appeals to the Supreme Court**

- 193.**(1) An appeal shall lie to the Supreme Court from any order of the National Tax Tribunal on the basis of a certificate of fitness by the National Tax Tribunal .
- (2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under sub-section (1) as they apply in the case of appeals from decrees of a High Court.

- (3) The Assessing Officer shall give effect to the order of the Supreme Court on the basis of certified copy of the judgment delivered by the Court in an appeal filed before it.
- (4) Tax shall be payable in accordance with the assessment made in any case regardless of the fact that an appeal has been preferred to the Supreme Court.

### **Revision of orders prejudicial to revenue**

- 194.**(1) The Commissioner may, for the purposes of revising any order passed in any proceeding under this Code before any income-tax authority subordinate to him, call for, and examine, all available records relating thereto.
- (2) The Commissioner may, after giving the assessee an opportunity of being heard, pass an order (hereafter referred to as the revision order) as the circumstances of the case justifies, if he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interest of the revenue .
  - (3) The Commissioner may make, or cause to be made, such enquiry as he deems necessary for the purposes of passing an order under sub-section (2).
  - (4) The revision order passed by the Commissioner under sub-section (2) may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.
  - (5) The power of the Commissioner under sub-section (2) for revising an order shall not extend to such matters,-
    - (a) against which an appeal is pending before the Commissioner (Appeals); or
    - (b) as has been considered and decided in any appeal.
  - (6) No order under sub-section (2) shall be made after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.
  - (7) In computing the period of limitation under sub-section (6), the following shall not be included:-
    - (a) the time taken in giving an opportunity to the assessee to be reheard under section 137.
    - (b) any period during which any proceeding under this section is stayed by an order, or injunction, of any Court.
  - (8) Without prejudice to the generality of the foregoing provisions, an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if -
    - (a) the order is passed without making inquiries or verification which, in the opinion of the Commissioner, should have been made;
    - (b) the order is passed allowing any relief without probing into the claim;
    - (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 133;
    - (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by, -
      - (i) Appellate Tribunal, National Tax Tribunal, High Court or Supreme Court in the case of the assessee or any other person under this Code, the Income-tax Act, 1961 or the Indian Income-tax Act, 1922; or
      - (ii) a court under any other law;or
    - (e) the order has been made following the order of a jurisdictional High Court or the National Tax Tribunal but a special leave petition has been granted by the Supreme Court against the said decision of the High Court or the National Tax Tribunal subsequent to the passing of the order.

- (9) An order passed by an income-tax authority shall not be considered to be erroneous in so far as it is prejudicial to the interests of the revenue, if -
- (a) the order has been made adopting one of the courses permissible in law; or
  - (b) the order has been made by holding a view sustainable in law regardless of the existence of another view sustainable in law to which the Commissioner is in agreement.

## **CHAPTER - XI COLLECTION AND RECOVERY**

### **A.-Deduction at source**

#### **Liability to deduct tax at source**

- 195.**(1) Any person responsible for making specified payment shall, at the time of the payment, deduct income tax therefrom at the appropriate rate
- (2) The specified payment, referred to in sub-section (1), shall be the payment of the nature specified in Column 2 of-
    - (a) the Third Schedule, if the deductee is a resident; and
    - (b) the Fourth Schedule, if the deductee is a non-resident.
  - (3) The appropriate rate referred to in sub-section (1) shall, in respect of a specified payment, be the rate specified in the corresponding entry in Column 3 of-
    - (a) the Third Schedule, if the deductee is a resident; and
    - (b) the Fourth Schedule, if the deductee is a non-resident.
  - (4) However, the appropriate rate referred to in sub-section (1) shall, in a case where the deductee has failed to furnish his Permanent Account Number to the deductor, be the higher of the following rates:-
    - (a) twenty per cent; and
    - (b) the rate specified in sub-section (3).

#### **Payment of income and deduction of tax**

- 196.**(1) For the purposes of section 195, the payment of income shall be deemed to have been made, if the amount payable has been settled-
- (a) in cash;
  - (b) by issue of a cheque or draft;
  - (c) by credit to any account, whether called "Suspense account" or by any other name; or
  - (d) by any other mode as may be prescribed.
- (2) The deductor shall, before making the payment of income, ensure that the tax deductible in respect of the income has been paid, if the payment is wholly, or partly, in kind.
  - (3) The deductor may, at the time of making any deduction of tax from the income liable to be taxed under the head "Income from employment", increase or reduce the amount to be deducted from a deductee for the purposes of adjusting any deficiency, or excess, arising out of any previous deduction or non-deduction during the financial year in respect of such deductee.
  - (4) For the purposes of deduction of tax, the income shall be increased to such amount as would, after deduction of tax thereon at the rates specified in the Third Schedule or the Fourth Schedule, be equal to the net amount payable under an agreement, or any other arrangement, if the tax chargeable on any income is to be borne by the deductor in pursuance to such agreement or arrangement.

### **Certificate for no deduction of tax**

- 197.**(1) The deductee may make an application, in the prescribed form and manner, to the Assessing Officer seeking a certificate for no deduction of income-tax from payments to be received by him.
- (2) The deductor may make an application, in the prescribed form and manner, to the Assessing Officer seeking a certificate for no deduction of income-tax from payments to be made by him to a non-resident deductee.
- (3) The Assessing Officer shall give to the deductee or the deductor, as the case may be, such certificate as may be appropriate, if he is satisfied that the total income of the deductee justifies no deduction of income-tax.
- (4) The deductor shall not deduct any tax until-
- (a) the certificate issued under sub-section (3) is cancelled by the Assessing Officer; or
  - (b) the expiry of the validity of the certificate.
- (5) The Board may, having regard to the convenience of the deductee and the interests of revenue, prescribe the cases in which, and the circumstances under which, an application may be made for the grant of the certificate and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

### **Payment of tax deducted, certificate to deductee, etc.**

- 198.**(1) Every deductor shall pay the sum deducted to the credit of the Central Government within the time, and in the manner, prescribed.
- (2) Every deductor shall furnish, within the prescribed time, to the deductee a certificate to the effect that tax has been deducted and specifying the particulars as may be prescribed.
- (3) Every deductor shall deliver, or cause to be delivered, a return of tax deduction in accordance with sub-section (4).
- (4) The Board shall prescribe the following in respect of the return of tax deduction:-
- (a) the period in respect of which the return is to be furnished;
  - (b) the form of the return and the particulars therein;
  - (c) the manner of verification of the return;
  - (d) the time by, and the medium in, which the return is to be delivered;
  - (e) the income-tax authority, or any other person, authorised to receive the return; and
  - (f) any other matters connected therewith.

### **Reporting of payments without deduction of tax**

- 199.**(1) Every deductor shall deliver, or cause to be delivered, a return in respect of payment of interest to residents without deduction of tax.
- (2) The deductor referred to in sub-section (1) shall be any -
- (a) permitted financial institution; or
  - (b) co-operative society.
- (3) The Central Government may, by notification in the Official Gazette, require any deductor to deliver, or cause to be delivered, a return in respect of any payment without deduction of tax.
- (4) The Board shall prescribe the following in respect of the return under this section:-
- (a) the period in respect of which the return is to be furnished;
  - (b) the form of the return and the particulars therein;
  - (c) the manner of verification of the return;

- (d) the time by, and the medium in, which the return is to be delivered;
- (e) the income-tax authority, or any other person, authorised to receive the return; and
- (f) any other matters connected therewith.

### No deduction of tax in certain cases

**200.** No tax shall be deducted from the following:-

- (a) any payment, other than salary, made by an individual or a Hindu undivided family if the individual or the Hindu undivided family is not liable to audit of accounts under section 84 during the financial year immediately preceding the financial year in which the payment is made;
- (b) any interest payable on any security of the Central Government or a State Government;
- (c) any interest on debenture payable to an individual, if -
  - (i) the debentures are issued by a widely held company;
  - (ii) the debentures are listed in a recognised stock exchange in India; and
  - (iii) the aggregate amount payable during the financial year does not exceed two thousand five hundred rupees;
- (d) any interest on time deposits payable, if-
  - (i) the time deposits are made with a banking company or a co-operative bank or a housing-finance public company; and
  - (ii) the aggregate amount payable by a branch of the bank or company during the financial year does not exceed ten thousand rupees;
- (e) any other interest payable if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;
- (f) any interest payable to,-
  - (i) any banking company;
  - (ii) any co-operative bank;
  - (iii) any financial corporation established by or under a Central or State or Provincial Act;
  - (iv) any insurer;
  - (v) any mutual fund; or
  - (vi) any institution, association or body, or class of institutions, associations or bodies, which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;
- (g) any interest payable by a firm to a partner of the firm;
- (h) any interest payable in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;
- (i) any interest payable in respect of deposits (other than time deposits) with a banking company or a co-operative bank;
- (j) any interest payable by the Central Government under any provisions of this Code or the Income-tax Act, 1961;
- (k) any interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal, if the aggregate of the amounts of such interest paid, or credited, during the financial year does not exceed one hundred thousand rupees;
- (l) any amount payable on maturity, or redemption, of a zero coupon bond;
- (m) any payment for carriage of goods by road transport if the payee furnishes his Permanent Account Number to the payer;

- (n) any payment to a contractor in respect of works contract, service contract, advertising, broadcasting and telecasting, supply of labour for carrying out any works, or service, contract or carriage of goods or passengers by any mode of transport, other than by railways, if -
- (i) the amount of any payment during the financial year does not exceed twenty thousand rupees; and
- (ii) the aggregate amount of the payments during the financial year does not exceed fifty thousand rupees;
- (o) any payment of commission or brokerage, if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;
- (p) any payment of rent, if the aggregate amount of the payments during the financial year does not exceed one hundred and twenty thousand rupees;
- (q) any payment of compensation on acquisition of immovable property, if the aggregate amount of the payments during the financial year does not exceed one hundred thousand rupees.

### Credit for tax deducted

- 201.** The Board may, for the purposes of giving credit in respect of tax deducted, make such rules for the purposes of-
- (a) giving credit to the deductee, or any other person;
- (b) the financial year for which such credit may be given; and
- (c) any other matter connected therewith.

## B. - Collection at source

### Tax collection at source

- 202.(1)** Any person, being a seller, lessor or licensor, who is responsible for collecting any amount on account of any transaction specified in column (2) of Table-6, shall collect from the buyer, lessee or licensee, as the case may be, a sum, equal to the percentage as specified in corresponding entry in column (3) of the said Table, of such amount as income-tax.

**Table-6**

Sl.No. (1)	Nature of goods or contract or license or lease (2)	Percentage (3)
(i)	Sale of alcoholic liquor for human consumption	3 per cent
(ii)	Sale of tendu leaves	3 per cent
(iii)	Sale of timber obtained under a forest lease or otherwise	3 per cent
(iv)	Sale of any other forest produce not being timber or tendu leaves	3 per cent
(v)	Sale of scrap	3 per cent
(vi)	Grant of lease or licence or contract for parking lot	3 per cent
(vii)	Grant of lease or licence or contract for toll plaza	3 per cent
(viii)	Grant of lease or licence or contract for mining or quarrying	3 per cent

- (2) For the purposes of sub-section (1), the payment of income shall be deemed to have been made, if the amount receivable has been settled,-
- (a) in cash;
- (b) by issue of a cheque or draft;
- (c) by credit to any account, whether called "Suspense account" or by any other name; or
- (d) by any other mode as may be prescribed.



- (3) Any person collecting any amount under sub-section (1) shall pay the sum so collected to the credit of the Central Government within the time, and in the manner, prescribed.
- (4) Every person responsible for collecting any amount under sub-section (1) shall furnish, within the prescribed time, to the buyer, lessee or licensee referred to in sub-section (1), a certificate of tax collection, as prescribed.
- (5) Every person aforesaid shall deliver, or cause to be delivered, a return of tax collection, as may be prescribed.
- (6) The Board shall prescribe the following in respect of the return of tax collection:-
  - (a) the period in respect of which the return is to be furnished;
  - (b) the form of the return and the particulars therein;
  - (c) the manner of verification of the return;
  - (d) the time by, and the medium in, which the return is to be delivered;
  - (e) the income-tax authority, or any other person, authorised to receive the return; and
  - (f) any other matters connected therewith.

### Certain definitions

203. For purposes of this sub-chapter,-

- (a) “**buyer**” means a person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,-
  - (i) a public sector company, the Central Government, a State Government, an embassy, a high commission, legation, commission, consulate and trade representation of a foreign State, and a club; or
  - (ii) a buyer in the retail sale of such goods, purchased by him for personal consumption;
- (b) “**lessee or licensee**” means a person other than a public sector company who is granted a lease or licence or is awarded a contract;
- (c) “**lessor or licensor**” means a person who grants a lease or licence or enters into a contract or otherwise transfers, wholly or partly, any right or interest to a lessee or licensee,
- (d) “**scrap**” means waste from the manufacture or mechanical working of materials which is unusable because of breakage, wear and tear and other reasons;
- (e) “**seller**” means,-
  - (i) the Central Government, a State Government or any local authority;
  - (ii) a corporation, or authority, established by, or under, a Central, State, or Provincial Act;
  - (iii) any company, firm or co-operative society; and
  - (iv) an individual or a Hindu undivided family, if the total sales, gross receipts or turnover from the business carried on by him exceed the monetary limits specified in sub-section (1) of section 84 during the financial year immediately preceding the financial year in which the goods of the nature specified in column 2 of Table 6 against entry number (i) to (v).

## C: ADVANCE TAX

### Liability to pay advance income-tax

- 204.(1) Every assessee shall be liable to pay advance income-tax during any financial year in respect of his total income of the financial year, if the amount of advance income-tax payable exceeds ten thousand rupees.



- (2) The amount of advance income-tax payable by an assessee in the financial year shall be computed in the following manner:
- (a) the assessee shall first estimate his total income and calculate income-tax thereon at the rates in force in the financial year;
  - (b) the income-tax so calculated shall be reduced by -
    - (i) the amount of income-tax which would be deductible or collectible at source during the financial year from any income which is taken into account in estimating the total income;
    - (ii) the amount of credit under section 206, allowed to be set off in the financial year; and
  - (c) the balance amount of income-tax shall be the advance income-tax payable.
- (3) The advance income-tax, in the case of a company, shall be payable in four instalments during the financial year on or before the dates specified in Column 1 of Table 7 and shall be equal to the amount specified in corresponding entry in Column 2 of the Table;

**TABLE - 7**

<b>Date of instalment</b> <i>(1)</i>	<b>Amount payable</b> <i>(2)</i>
On or before the 15th June	Not less than fifteen per cent. of the advance income-tax.
On or before the 15th September	Not less than forty-five per cent. of the advance income-tax, as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th December	Not less than seventy-five per cent. of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before the 15th March	The whole amount of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

- (4) However, the advance income-tax, in case of any other person, shall be payable in three instalments, during the financial year on or before the dates specified in Column 1 of Table 8 and shall be equal to the amount specified in corresponding entry in Column 2 of the Table.

**TABLE - 8**

<b>Date of instalment</b> <i>(1)</i>	<b>Amount payable</b> <i>(2)</i>
On or before the 15th September	Not less than thirty per cent. of the advance income-tax.
On or before the 15th December	Not less than sixty per cent of the advance income-tax, as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th March	The whole amount of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

- (5) The assessee may increase or reduce the advance income-tax payable in the remaining instalment to accord with the estimate of his total income and make payment of such advance income-tax in the remaining instalment accordingly.
- (6) Any amount of advance income-tax paid after 15th March but before the expiry of the financial year shall be treated as advance income-tax paid during the financial year.

### **D-Tax credit for relief in respect of arrears or advance receipts**

#### **Tax relief for arrears or advance receipts**

- 205.**(1) The Assessing Officer shall, on an application made to him by any person, grant such relief as may be prescribed, if-
- (a) the person is in receipt in any financial year of any arrears, or advance, of salary or family pension relating to any other financial year; or
  - (b) the accumulated balance due to the person participating in an approved provident fund is included in his total income.
- (2) The relief referred to in sub-section (1) shall not be allowed in respect of any compensation received towards retrenchment or voluntary retirement.

### **E. - Foreign tax credit**

#### **Foreign tax credit**

- 206.**(1) An assessee shall be allowed a credit in respect of income-tax paid by deduction, or otherwise, in any other country under the law in force in that country, in accordance with the provisions of this section.
- (2) An assessee shall be allowed a credit against the Indian income-tax payable by him in respect of his income which has accrued during the financial year outside India, of the amount determined in accordance with the Agreement entered into with such other country under section 258.
- (3) However, in a case where there is no agreement under section 258 with the other country, the amount referred to in sub-section (2) shall be determined -
- (a) at the Indian rate of tax or the rate of tax of the other country, whichever is lower; or
  - (b) at the Indian rate of tax, if both the rates are equal.
- (4) An assessee shall, regardless of anything contained in sub-section (3), not be entitled to credit against the Indian income tax payable by him in respect of any income referred to therein, if -
- (i) the income is also deemed to accrue in India; and
  - (ii) no Agreement under section 258 has been entered into with the other country in which the income has accrued.
- (5) The Central Government may prescribe the method for computing the amount of credit, the manner of claiming credit and such other particulars as are necessary for the relief or avoidance of double taxation.

### **F. - Payment of dividend distribution tax**

#### **Payment of dividend distribution tax**

- 207.** The principal officer of the resident company shall pay the dividend distribution tax referred to in section 99 to the credit of the Central Government within fourteen days from the date of distribution, or payment, of dividend, whichever is earlier.

**G. - Payment of wealth-tax**

**Payment of wealth-tax**

208. The wealth-tax referred to in section 101 shall be payable by the due date.

**H. - Interest**

**Interest payable to the Central Government**

- 209.(1) An assessee shall be liable to pay simple interest at the rate of one per cent. per month, or part of a month, on any shortfall in the amount payable by him under this Code for the period from the day immediately following the date on which such amount was payable to the date of actual payment.
- (2) The liability to pay interest under sub-section (1) shall be computed at periodical intervals.

**Interest payable to the assessee**

- 210.(1) An assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month, or part of a month, on any amount receivable by him under this Code in respect of any financial year for the period from the day immediately following the expiry of that financial year or the date on which such amount was paid, whichever is later, to the date on which the refund is granted.
- (2) An assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month, or part of a month, on the amount of interest receivable by him under sub-section (1) for the period from the date of grant of refund under that sub-section to the date of actual payment of such interest, if such interest is not paid to him along with the refund.

**Manner of computation of interest and waiver thereof to be prescribed**

- 211.(1) The Board may prescribe the manner of computation of interest payable by, or to the, assessee and all other matters connected therewith.
- (2) The Board may, having regard to the hardship caused to the assessee and the interest of revenue, prescribe the circumstances, manner and all other connected matters for providing relief by reducing the interest payable or refunding the interest paid so, however, that the aggregate of the amount so reduced, or refunded, shall not exceed fifty per cent. of the total interest payable.

**I. - Refund**

**Refunds**

- 212.(1) An assessee shall be entitled to a refund of the excess of any amount paid by him or on his behalf, or treated as paid by him or on his behalf, for any financial year, over the amount with which he is liable under this Code, and such refund shall be issued in the prescribed manner.
- (2) An assessee shall, in a case where an assessment is set aside or cancelled or an order of fresh assessment is directed to be made in an appeal, or any other proceeding under the Code, be entitled to the refund only on the making of the fresh assessment.

- (3) The amount of refund determined under sub-section (1), or sub-section (2), shall be reduced by the amount, if any, remaining payable under this Code by the assessee to whom the refund is due, and the balance amount of refund, if any, shall be issued, alongwith an intimation to this effect to the assessee.

## **J. - Recovery**

### **Recovery by Assessing Officer**

- 213.(1) Any amount specified as payable in a notice of demand shall be paid within thirty days of the service of the notice, to the credit of the Central Government in the manner prescribed.
- (2) The Assessing Officer may, on an application made by the assessee, before the expiry of the period of thirty days, or during the pendency of appeal with the Commissioner (Appeals), extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.
- (3) An assessee shall be deemed to be in default, if the tax arrear is not paid within the time allowed under sub-section (1) or extended under sub-section (2), as the case may be.
- (4) The assessee shall be deemed to be in default in respect of the whole of the amount outstanding, if he commits defaults in paying any one of the instalments within the time fixed under sub-section (2).
- (5) The Assessing Officer may recover the amount in respect of which the assessee is in default, or is deemed to be in default, by any one, or more, of the modes provided in section 215.
- (6) The Assessing Officer shall cease to exercise power for recovery of any amount after the end of one year from the end of the financial year in which the notice of demand referred to in sub-section (1) was issued.
- (7) The Assessing Officer may, regardless of anything contained in sub-section (6), cease to exercise, with the prior approval of the Commissioner, power for recovery of any amount before the expiry of the period of limitation in sub-section (6).
- (8) Upon ceasing of the power of the Assessing Officer to recover the demand, all the powers relating to recovery of the amount shall vest in the Tax Recovery Officer.

### **Recovery by Tax Recovery Officer**

- 214.(1) The record of the Income-tax Department containing the tax arrears from any assessee on the date on which Tax Recovery Officer assumes jurisdiction shall be deemed to be a statement of tax arrears from such assessee (such statement being hereafter in this Chapter and in the Fifth Schedule referred to as "certificate").
- (2) The certificate under sub-section (1) shall stand amended from time to time consequent to any proceeding under this Code and the Tax Recovery Officer shall recover the amount so modified.
- (3) The Tax Recovery Officer may rectify any mistake apparent from the record.
- (4) The Tax Recovery Officer shall have the power to extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.
- (5) The Tax Recovery Officer shall proceed to recover from the assessee the amount specified in the certificate by one, or more, of the modes referred to in section 258 or in the Fifth Schedule.

**Modes of recovery**

- 215.**(1) The Assessing Officer, or Tax Recovery Officer, may require the employer of the assessee to deduct from any payment to the assessee such amount as is sufficient to meet the tax arrears from the assessee.
- (2) Upon requisition under sub-section (1), the employer shall comply with the requisition and shall pay the sum so deducted to the credit of the Central Government in the prescribed manner.
  - (3) Any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition made under sub-section (1).
  - (4) The Assessing Officer, or Tax Recovery Officer, may, by notice in writing, require any debtor of the assessee to pay such amount, not exceeding the amount of debt, as is sufficient to meet the tax arrears.
  - (5) Upon receipt of the notice under sub-section (4), the debtor shall comply with the requisition and shall pay the sum to the credit of the Central Government in the prescribed manner within the time (not being before the debt becomes due to the assessee) specified in the notice.
  - (6) A copy of the notice issued under sub-section (4) shall be forwarded to the assessee at his last address known to the Assessing Officer, or Tax Recovery Officer, and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.
  - (7) It shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, regardless of any rule, practice or requirement to the contrary if the notice under sub-section (4) is issued to a post office, banking company or an insurer,
  - (8) Any claim in respect of any property, in relation to which a notice under sub-section (4) has been issued, arising after the date of the notice, shall be void as against any demand contained in the notice.
  - (9) A person to whom a notice under sub-section (4) has been issued, shall not be required to pay the amount of tax arrears specified therein, or part thereof, if he objects to it by a statement on oath that the sum demanded, or any part thereof, is not due to the assessee or that he does not hold any money for, or on account of, the assessee.
  - (10) The person referred to in sub-section (9) shall be personally liable to the Assessing Officer, or Tax Recovery Officer, to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Code, whichever is less, if it is discovered that the statement made by him was false in any respect.
  - (11) The Assessing Officer, or Tax Recovery Officer, may amend, or revoke, any notice issued under sub-section (4) or extend the time for making any payment in pursuance of such notice.
  - (12) The Assessing Officer, or Tax Recovery Officer, shall grant a receipt for any amount paid in compliance with a notice issued under sub-section (4), and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.
  - (13) Any person discharging any liability to the assessee after receipt of a notice under sub-section (4) shall be personally liable to the Assessing Officer, or Tax Recovery Officer, to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Code, whichever is less.

- (14) The debtor to whom a notice under sub-section (4) is sent may be proceeded against for the realization of the amount as if it was a tax arrear from him, in the manner provided in this section and the Fifth Schedule, if he fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer.
- (15) The Assessing Officer, or Tax Recovery Officer, may apply to the Court, in whose custody there is money belonging to the assessee, for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax liability.
- (16) The Assessing Officer, or Tax Recovery Officer, shall effect the recovery of any tax arrear in the same manner as attachment and sale of any movable property under the Fifth Schedule, if he is so authorised by the Chief Commissioner, or Commissioner, by general or special order.
- (17) For the purposes of this section,-
- (a) debtor in relation to an assessee means,-
    - (i) any person from whom money is due, or may become due, to the assessee; or
    - (ii) any person who holds, or may subsequently hold, money for, or on account of, the assessee; or
    - (iii) any person who holds, or may subsequently hold, any money for, or on account of, the assessee jointly with any other person; and
  - (b) shares of the joint holders in the account shall be presumed, until the contrary is proved, to be equal.

### Tax Recovery Officer by whom recovery is to be effected

- 216.**(1) The Tax Recovery Officer competent to take action under section 215 shall be the Tax Recovery Officer -
- (a) within whose jurisdiction -
    - (i) the assessee carries on his business;
    - (ii) the principal place of the business of the assessee is situate;
    - (iii) the assessee resides; or
    - (iv) any movable or immovable property of the assessee is situate; or
  - (b) who has been assigned jurisdiction under section 134.
- (2) The Tax Recovery Officer, referred to in sub-section (1), may send a certificate, in the prescribed manner, specifying the tax arrears to be recovered, to another Tax Recovery Officer within whose jurisdiction the assessee resides or has property, if the Tax Recovery Officer -
- (a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction, or
  - (b) is of the opinion that, for the purpose of expediting, or securing, the recovery of the whole, or any part, of the amount under this Chapter, it is necessary so to do.
- (3) The other Tax Recovery Officer shall, on receipt of the certificate, assume jurisdiction for recovery of the amount of tax arrears specified therein and proceed to recover the amount in accordance with the provisions of this sub-Chapter.

### Recovery of tax arrear in respect of non-resident from his assets

- 217.** The amount of tax arrears due from a non-resident may be recovered from-
- (a) any asset of the non-resident, wherever located; or
  - (b) any amount payable by any person to the non-resident.

### Recovery in the case of a company in liquidation

- 218.(1) The liquidator shall inform the Assessing Officer, who has jurisdiction to assess the income of the company, of his appointment within thirty days of his becoming the liquidator.
- (2) The Assessing Officer shall, within three months from the date on which he receives the information, intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Code or under any law repealed by this Code.
- (3) The liquidator-
- (a) shall not part with any of the assets of the company, or the properties, in his custody until he has been intimated by the Assessing Officer under sub-section (2); and
- (b) on being so intimated, shall set aside an amount equal to the amount intimated.
- (4) Upon receipt of the intimation from the Assessing Officer under sub-section (2), the amount so intimated shall, regardless of anything contained in any other law for the time being in force, be the first charge on the assets of the company remaining after payment of the following dues:-
- (a) workmen's dues; and
- (b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to sub-section (1) of section 529 of the Companies Act, 1956 *pari passu* with such dues.
- (5) The liquidator shall be personally liable for the payment of the amount payable by the company, if he-
- (a) fails to inform in accordance with sub-section (1); or
- (b) fails to set aside the amount as required by sub-section (3).
- (6) The obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally in a case where there are more than one liquidator.
- (7) The provisions of this section shall prevail over anything to the contrary contained in any other law in force.
- (8) For the purposes of this section,-
- (a) "liquidator" in relation to a company shall include a receiver of the assets of the company;
- (b) "workmen's" and "workmen's dues" shall have the meaning assigned to it in section 529 of the Companies Act, 1956.

### Liability of manager of a company

- 219.(1) Every person being a manager during the financial year shall be, jointly and severally, liable for the payment of any amount due under this Code in respect of the company for the financial year, if the amount cannot be recovered from the company.
- (2) The provisions of sub-section (1) shall not apply, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (3) The provisions of this section shall prevail over anything contrary contained in the Companies Act, 1956.
- (4) For the purposes of this section, "manager" shall include a managing director and both shall have the meaning respectively assigned to them in clause (24) and clause (26) of section 2 of the Companies Act, 1956.



### Joint and several liability of participants

- 220.** Every person, being a participant in an unincorporated body during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Code and all the provisions of this Code shall apply accordingly.

### Recovery of tax in pursuance of agreements with foreign countries

- 221.**(1) The Board may forward a certificate to any Tax Recovery Officer for recovery of any amount under the corresponding law in force in any country outside India from a person having property in India, if such country, or any authority under the Government of that country, has entered into an agreement with India under sub-section (1) of section 258 for the purposes specified in clause (d) thereof.
- (2) On receipt of the certificate under sub-section (1) from the Board, the Tax Recovery Officer shall -
- (a) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate under section 215; and
  - (b) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.
- (3) The Tax Recovery Officer may, in a case where an assessee has property in a country outside India, forward a certificate to the Board for recovery of the tax arrears from the assessee, if the Central Government has entered into an agreement with that country under sub-section (1) of section 258 for the purposes specified in clause (d) thereof.
- (4) On receipt of the certificate under sub-section (3) from the Tax Recovery Officer, the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

### Tax clearance certificate in certain cases

- 222.**(1) No person shall leave the territory of India unless he furnishes to the prescribed authority an undertaking to the effect that he has made satisfactory arrangement for discharging his tax liability, if any, in respect of any income liable to tax in India.
- (2) The prescribed authority shall, on receipt of the undertaking, immediately issue to the person a no objection certificate for leaving India.
- (3) The owner, or charterer, of any ship, or aircraft, shall be personally liable to pay the whole, or any part, of the amount payable under this Code by any person required to obtain a no objection certificate in accordance with the foregoing sub-sections, if the person leaves India, without the possession of the certificate, in the ship, or aircraft, of the owner or the charterer.
- (4) The owner, or charterer, of any ship, or aircraft, under sub-section (3), shall be deemed to be an assessee in default in respect of the liability created under sub-section (3) and such amount shall be recoverable from him in the manner provided in this Chapter as if it were tax arrears.
- (5) The Board may, having regard to the interests of revenue, prescribe the circumstances, the form and the manner, in which the undertaking is to be furnished, and any other matter connected therewith.
- (6) For the purposes of this section, the expression “owner” and “charterer” include any representative, agent or employee empowered by the owner, or charterer, to allow persons to travel by the ship or aircraft.



**Recovery by suit or under other law not effected**

- 223.(1) The several modes of recovery specified in this Chapter shall not affect in any way,-
- (a) any other law for the time being in force relating to the recovery of debts due to Government; or
  - (b) the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.
- (2) It shall be lawful for the Assessing Officer, or the Government, to have recourse to any such law or suit, regardless of the fact that the tax arrears are being recovered from the assessee by any mode specified in this sub-chapter.

**CHAPTER - XII**

**PENALTIES**

**Penalty for under-reporting of tax base**

- 224.(1) Every person shall be liable to a penalty if he has willfully under reported the tax base for any financial year.
- (2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than, but which shall not exceed two times, the amount of tax payable in respect of the amount of tax base under reported for the financial year.
- (3) A person shall be deemed to have willfully under reported the tax base, if-
- (a) he has failed to file the return of tax bases by the due date, as required by sub-section (1) of section 148;
  - (b) the tax base assessed is greater than the tax base disclosed in the return of tax bases; or
  - (c) the tax base reassessed is greater than the tax base assessed immediately before the reassessment.
- (4) The amount of tax base under reported shall be the aggregate amount of the addition, or disallowance, made by the Assessing Officer, Commissioner or Commissioner (Appeals), as the case may be.
- (5) The aggregate amount of the addition, or disallowance, made by the Assessing Officer in assessment, or reassessment, shall,-
- (a) in a case where no return of tax base has been filed as required by any provision of this Code, be the assessed tax base, as reduced by the maximum amount not chargeable to tax;
  - (b) in a case where the return of tax base has been filed as required by section 148, be the amount of the tax base assessed, as reduced by the tax base disclosed in the return so filed;
  - (c) in a case where the return has been filed as required by section 151 or section 153, be the aggregate of,-
    - (i) the tax base disclosed in the return so filed, as reduced by the maximum amount not chargeable to tax; and
    - (ii) the amount of the tax base assessed, as reduced by the tax base disclosed in the return so filed;
  - (d) in a case where no return of tax base has been filed as required by section 148, section 151 or section 152 but the return of tax base has been filed as required by section 166, be the tax base reassessed, as reduced by the maximum amount not chargeable to tax; and
  - (e) in a case where a return of tax base has been filed as required by section 148, section 151 or section 152 and the return of the tax base has also been filed as

required by section 166, be the amount of the tax base reassessed, as reduced by the tax base assessed immediately before the reassessment.

- (6) The aggregate amount of the addition, or disallowance, made by the Commissioner in revision, shall be tax base assessed consequent to revision, as reduced by the tax base assessed in the order so revised.
- (7) The aggregate amount of the addition, or disallowance, made by the Commissioner (Appeals) in appeal, shall be the aggregate of all enhancements made by the Commissioner (Appeals) in the order under appeal.
- (8) The aggregate amount of the addition, or disallowance, referred to in sub-sections (5) to (7) shall include-
  - (a) the amount of any money or the value of bullion, jewellery or other valuable article or thing, hereinafter referred to as 'assets', found in the possession of the assessee, or under his control, in the course of search under section 139, if-
    - (i) the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any financial year which has ended before the date of search;
    - (ii) the due date for filing the return of tax base for the financial year has expired; and
    - (iii) the return of tax base for the financial year has-
      - (A) not been furnished before the date of the search; or
      - (B) been furnished before the date of search but such income has not been declared therein;
  - (b) the amount, or value, of assets belonging to the assessee and delivered to the requisitioning officer under sub-section (4) of section 140 or handed over to the Assessing Officer under section 142, if -
    - (i) the assessee claims that such assets have been acquired by him by utilising (wholly or partly) his income for any financial year which has ended before the date of search during the course of which the assets were seized;
    - (ii) the due date for filing the return of tax base for the financial year has expired; and
    - (iii) the return of tax base for the financial year has-
      - (A) not been furnished before the date of search during the course of which the assets were seized; or
      - (B) been furnished before the date of search but such income has not been declared therein;
  - (c) any tax base based on any entry in any books of account or other documents or transactions, if-
    - (i) the assessee claims that such entry in the books of account or other documents or transactions represents his tax base, wholly or in part, for any financial year which has ended before the date of search during the course of which the assets were seized;
    - (ii) the due date for filing the return of tax base for the financial year has expired; and
    - (iii) the return of tax base for the financial year has-
      - (A) not been furnished before the date of search during the course of which the assets were seized; or
      - (B) been furnished before the date of search but such income has not been declared therein;

- (9) However, the aggregate amount of the addition, or disallowance, referred to in sub-sections (5) to (7) shall not include the following:-
- (a) amount relating to addition, or disallowance, in respect of which the assessee offers an explanation and the Assessing Officer is satisfied that :
    - (i) the explanation is bonafide;
    - (ii) the assessee has disclosed all the facts material to the addition or disallowance;and
    - (iii) the assessee has disclosed all the facts relating to the explanation.
  - (b) amount relating to addition, or disallowance, determined on the basis of an estimate by the Assessing Officer, if the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom;
  - (c) the amount relating to addition, or disallowance, pertaining to any issue, determined on the basis of an estimate by the Assessing Officer, if the assessee,-
    - (i) has, on his own, estimated a lower amount of addition or disallowance on the same issue;
    - (ii) has included such amount in the computation of his tax base; and
    - (iii) has disclosed all the facts material to the addition or disallowance;
  - (d) the amount of tax base in respect of which the liability to tax has been discharged by way of pre-paid taxes;and
  - (e) the amount of undisclosed tax base referred to in section 225.
- (10) The tax payable in respect of the aggregate amount of the addition, or disallowance, shall be the amount of tax calculated on the aggregate amount of the addition, or disallowance, made by the Assessing Officer, in assessment, -
- (a) at the maximum marginal rate in the case to which Paragraph A or Paragraph B of Rule I of the First Schedule applies; and
  - (b) at the rate specified in Rule I of the First Schedule, in all other cases.
- (11) No addition, or disallowance, of an amount shall form the basis for imposition of penalty, if -
- (a) the same amount of the addition, or disallowance, has formed the basis of imposition of penalty in the case of the person for the same or any other financial year;or
  - (b) the amount relates to any addition, or disallowance, made pursuant to the adjustment under section 155.
- (12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the -
- (a) Assessing Officer, if the amount of tax base under reported is determined in assessment, or reassessment;
  - (b) Commissioner, if the amount of tax base under reported is determined in revision of the tax base by the Commissioner; or
  - (c) Commissioner (Appeals), if the amount of tax base under reported is determined in appeal against an assessment, or a reassessment.

### **Penalty where search has been initiated**

- 225.**(1) Every person shall, regardless of anything to the contrary contained in any other provision of this Code, be liable to a penalty in respect of the undisclosed tax base for the specified financial year, if a search and seizure operation has been conducted under section 139 in the case of the person.
- (2) The penalty referred to in sub-section (1) shall be a sum equal to ten per cent. of the undisclosed tax base for the specified financial year.

- (3) The provisions of sub-section (1) shall not apply, if the assessee,-
- (a) in the course of the search, in a statement under sub-section (9) of section 139, admits the undisclosed income and specifies the manner in which such tax base has been derived;
  - (b) substantiates the manner in which the undisclosed tax base was derived; and
  - (c) pays the tax, together with interest, if any, in respect of the undisclosed tax base.
- (4) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer.
- (5) For the purposes of this section,-
- (a) **“undisclosed tax base”** means-
    - (i) any tax base of the specified financial year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other document or any transaction, found in the course of a search under section 139, which has-
      - (A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to the specified financial year; or
      - (B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of the search; or
    - (ii) any tax base of the specified financial year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified financial year which is found to be false and would not have been found to be so had the search not been conducted;
  - (b) **“specified financial year”** means the financial year-
    - (i) which has ended before the date of search, but the due date for filing the return of tax bases for such year has not expired before the date of search and the assessee has not furnished the return of tax bases for the financial year before the said date; or
    - (ii) in which search was conducted.

### **Penalty for other defaults**

- 226.**(1) Every person shall be liable to a penalty if he has, without reasonable cause, failed to -
- (a) keep and maintain any such books of account and other documents as required by section 83 for any financial year or to retain such books of account and other documents in accordance with the rules made there under;
  - (b) get his accounts audited in respect of any financial year as required by sub-section (1) and sub-section (2) of section 84 or obtain a report of such audit as required by sub-section (3) of that section;
  - (c) furnish a report to the Transfer Pricing Officer as required by sub-section (1) of section 149 or obtain the report as required by sub-section (2) of the said section;
  - (d) deduct the whole, or any part of, the tax as required by the provisions of sub-chapter-A of Chapter XI;
  - (e) collect the whole, or any part of, the tax as required by the provisions of sub-chapter-B of Chapter XI;
  - (f) pay the whole, or any part of, the tax as required by section 198 or section 202;

- (g) furnish the return of tax base under section 148 by the due date;
  - (h) furnish the prescribed information as required under section 144;
  - (i) answer any question put to him by an income-tax authority in the exercise of its powers under this Code, if he was otherwise legally bound to state the truth of any matter touching the subject of his assessment;
  - (j) sign any statement made by him in the course of any proceedings under this Code, which an income-tax authority may legally require him to sign;
  - (k) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents, at certain place and time in response to summons issued under sub-section (1) of section 138;
  - (l) furnish in time the return of tax deduction as required under section 198;
  - (m) failed to furnish in time the return of tax collection as required under section 202;
  - (n) furnish a certificate to the deductee as required by section 198;
  - (o) furnish a certificate to the buyer, lessee or licensee as required by section 202;
  - (p) deduct and pay tax as required by sub-section (2) of section 215;
  - (q) deliver, or cause to be delivered, a return in respect of payment of interest as required by sub-section (1) of section 199;
  - (r) deliver, or cause to be delivered, a return in respect of payment as required by sub-section (3) of section 199;
  - (s) comply with the provisions of section 259;
  - (t) comply with the provisions of section 260; or
  - (u) comply with a notice issued under section 157.
- (2) The sum referred to in sub-section (1) shall be any sum -
- (a) which shall not be less than fifty thousand rupees but which shall not exceed two hundred thousand rupees, in the cases referred to in clause (a), clause (b) or clause (c) of sub-section (1);
  - (b) which shall not be less than twenty five per cent. but which shall not exceed the amount, of tax deductible or collectible or payable, as the case may be, in the cases referred to in clause (d), clause (e) or clause (f) of sub-section (1);
  - (c) equal to five thousand rupees, in the case referred to in clause (g) of sub-section (1);
  - (d) which shall not be less than five thousand rupees but which shall not exceed one hundred thousand rupees, in any other case referred to in sub-section (1).

### Procedure

- 227.(1) The income-tax authority shall, for the purposes of imposing any penalty under this Chapter, issue a notice to any assessee requiring him to show cause why the penalty should not be imposed on him.
- (2) The income-tax authority for the purposes of sub-section (1) shall be -
- (a) the income-tax authority referred to in sub-section (12) of section 224, if the penalty is imposable under the said section;
  - (b) the Assessing Officer, if the penalty is imposable under section 225; and
  - (c) the income-tax authority before whom the default has been committed, if the penalty is imposable under section 226.
- (3) The notice referred to in sub-section (1) shall be issued only during the pendency of any proceedings under this Code for the relevant financial year.

- (4) An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner, if -
  - (a) the penalty exceeds one hundred thousand rupees and the income-tax authority levying the penalty is in the rank of Income-tax Officer; or
  - (b) the penalty exceeds five hundred thousand rupees and the income-tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner.
- (5) The proceedings under this Code shall be deemed to be pending for the relevant financial year, if-
  - (a) a notice of demand has been issued under section 168 in consequence of any order made or intimation issued under this Code for the relevant financial year and the sum or part thereof, specified therein, remains unpaid;
  - (b) an appeal has been filed against any order made or intimation issued under this Code for the relevant financial year.
- (6) Every order or penalty issued under this Chapter shall be accompanied by a notice of demand in respect of the amount of penalty imposed and the notice of demand shall be deemed to be a notice under section 168.

#### **Bar of limitation for imposing penalty**

- 228.**(1) No order imposing a penalty under this Chapter shall be passed after the expiry of one year from the end of the financial year in which the notice for imposition of penalty issued under section 227.
- (2) An order imposing, or dropping the proceedings for imposing, the penalty under this Chapter may be revised, or revived, as the case may be, on the basis of assessment of the tax base, as revised after giving effect to the order of Commissioner (Appeals), Appellate Tribunal, the National Tax Tribunal or the Supreme Court or order of revision under section 194.
  - (3) An order revising the penalty under sub-section (2) shall not be passed after the expiry of six months from the end of the month in which order of the Commissioner (Appeals), the Appellate Tribunal, National Tax Tribunal or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 194 is passed.
  - (4) In computing the period of limitation for the purposes of this section, the following time or period shall not be included:-
    - (a) the time taken in giving an opportunity to the assessee to be reheard under section 137; and
    - (b) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order, or injunction, of any court.

### **CHAPTER - XIII**

### **PROSECUTION**

#### **Chapter not in derogation of any other law or any other provision of this Code**

- 229.**(1) The provisions of this Chapter are in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences thereunder.
- (2) The provisions of this Chapter shall be independent of any order under this Code that may be made, or has not been made, on any person and it shall be no defence that the order has not been made on account of time limitation or for any other reason.

**Contravention of any restraint order**

- 230.(1) A person shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if such person contravenes any restraint order referred to in sub-section (7) of section 139.
- (2) The fine referred to in sub-section (1) shall not be less than fifty thousand rupees or more than five lakh rupees.

**Failure to comply with the provisions of clause (d) of sub-section (2) of section 139**

- 231.(1) A person, who is required to afford to the Authorised Officer the necessary facility to inspect the books of account or other documents as required under the provisions of clause (d) of sub-section (2) of section 139, shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if such person fails to afford such facility to the officer.
- (2) The fine referred to in sub-section (1) shall not be less than fifty thousand rupees or more than five lakh rupees.

**Removal, concealment, transfer or delivery of property to thwart tax recovery**

- 232.(1) If a person fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Fifth Schedule, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months, but which may extend to two years, and with fine.
- (2) The fine referred to in sub-section (1), shall not be less than fifty thousand rupees or more than five lakh rupees.

**Failure to comply with the provisions of sub-sections (1) and (3) of section 218**

- 233.(1) A person shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if such person -
- fails to give the information as required by sub-section (1) of section 218;
  - fails to set aside the amount as required by sub-section (3) of that section; or
  - parts with any of the assets of the company, or the properties, in his custody in contravention of the provisions of the aforesaid sub-section.
- (2) The fine referred to in sub-section (1) shall not be less than fifty thousand rupees or more than five lakh rupees.

**Failure to pay the tax deducted or collected at source or to pay the dividend distribution tax**

- 234.(1) A person shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if he fails to pay to the credit of the Central Government-
- the tax deducted, or collected, at source by him as required by, or under, the provisions of sub-chapter-A or sub-chapter-B of Chapter XI; or
  - the dividend distribution tax under section 207.
- (2) The fine referred to in sub-section (1) shall not be less than three per cent of the tax referred to therein, for each month of default, or part thereof, for the period commencing from the date on which the amount was required to be paid to the credit of the Central Government and ending with the date of payment or the date of conviction, whichever is earlier.



**Willful attempt to evade tax, etc.**

- 235.**(1) A person shall be punishable with rigorous imprisonment for a term which may extend to seven years and with fine, if he willfully attempts in any manner to evade any liability, under this Code, in respect of tax, interest or penalty.
- (2) A person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine, if a person willfully attempts in any manner to evade the payment of any liability, under this Code, in respect of tax, interest or penalty.
- (3) For the purposes of this section, a willful attempt to evade any liability, under this Code, in respect of tax, interest or penalty, or its payment, shall include a case where any person-
- (a) has in the possession, or control, any books of account or other documents, relevant to any proceeding under this Code, containing a false entry or statement; or
- (b) makes, or causes to be made, any false entry, or statement, in such books of account or other documents; or
- (c) willfully omits, or causes to be omitted, any relevant entry, or statement, in such books of accounts or other documents; or
- (d) causes any other circumstance to exist which will have the effect of enabling such person to evade any liability, under this Code, in respect of tax, penalty or interest, or the payment thereof.
- (4) The fine referred to in sub-section (1) or sub-section (2) shall not be less than fifty thousand rupees or more than five lakh rupees.

**Failure to furnish returns of tax bases**

- 236.**(1) A person shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if he fails to furnish in **due time** the return of tax base which he is required to furnish under sub-section (1) of section 148 or by notice given under section 151 or section 152 or section 166.
- (2) The provisions of sub-section (1) shall not apply, if -
- (a) the return of tax base has been voluntarily filed by the person; or
- (b) the tax payable by the person on the tax bases determined on assessment, or reassessment, as reduced by pre-paid taxes does not exceed twenty-five thousand rupees.
- (3) The fine referred to in sub-section (1) shall be a sum calculated at a rate which shall not be less than one hundred rupees or more than five hundred rupees, for every day during which the default continues.

**Failure to furnish other returns, statements, reports, etc.**

- 237.**(1) A person shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, if he fails to furnish-
- (a) in due time any return, statement or report which he is required to furnish under this Code; or
- (b) after receipt of a notice to do so, any return, statement or report which he is required to furnish under his Code.
- (2) The provisions of sub-section (1) shall not apply if the return, statement or report has been voluntarily furnished by the person.
- (3) The fine referred to in sub-section (1) shall be a sum calculated at a rate which shall not be less than fifty rupees or more than two hundred and fifty rupees, for every day during which the default continues.



**Failure to comply with direction under this Code**

- 238.(1) A person shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine, if he willfully fails to comply with any direction issued to him under this Code.
- (2) The fine referred to in sub-section (1) shall be a sum calculated at a rate which shall not be less than twenty rupees or more than one hundred rupees for every day during which the default continues.

**False statement in verification, etc.**

- 239.(1) A person shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine, if he -
- (a) makes a false statement in any verification under this Code, or under any rule made under this Code; or
- (b) delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true.
- (2) The fine referred to in sub-section (1) shall not be less than fifty thousand rupees or more than five lakh rupees.

**Falsification of books of account or documents, etc.**

- 240.(1) A person shall be punishable with rigorous imprisonment for a term which may extend to seven years and with fine, if he makes, or causes to be made, any entry, or statement, which is false and which he either knows to be false or does not believe to be true, in any books of account or other document relevant to, or useful, in any proceedings against him, or any other person, under this Code.
- (2) The fine referred to in sub-section (1) shall be a sum calculated at a rate which shall not be less than twenty rupees or more than one hundred rupees, for every day during which the default continues.

**Abetment of false return, etc.**

- 241.(1) A person shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine, if he abets, or induces, in any manner another person to-
- (a) make and deliver, or cause to be delivered, an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true; or
- (b) commit an offence under sub-section (1) of section 235.
- (2) The fine referred to in sub-section (1) shall be a sum which shall not be less than fifty thousand rupees or more than five hundred thousand rupees.

**Offences by companies, etc.**

- 242.(1) If an offence under this Code has been committed by a company then, regardless of anything to the contrary contained in this Chapter, -
- (a) such company shall be punished only with a fine; and
- (b) every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, shall be punished with imprisonment and fine.
- (2) The company and the persons referred to in clause (b) of sub-section (1) shall be liable to be proceeded against and punished in accordance with the provisions of this Code.

- (3) The persons referred to in clause (b) of sub-section (1) shall not be liable to any punishment if he proves that -
  - (a) the offence was committed without his knowledge, consent or connivance;
  - (b) the offence cannot be attributed to any neglect on his part; or
  - (c) he had exercised all due diligence to prevent the commission of such offence.
- (4) Any director, manager, secretary or any other officer of the company shall also be punished with imprisonment and fine, if it is proved that -
  - (a) the offence was committed with his knowledge, consent or connivance;
  - (b) the offence can be attributed to any neglect on his part; or
  - (c) he had not exercised all due diligence to prevent the commission of such offence.
- (5) For the purposes of this section, -
  - (a) “company” means a body corporate, and includes —
    - (i) an unincorporated body; and
    - (ii) a Hindu undivided family; and
  - (b) “director”, in relation to —
    - (i) an unincorporated body means a participant in the body;
    - (ii) a Hindu undivided family, means an adult member of the family; and
    - (iii) a company, means a whole-time director, or where there is no such director, any other director or manager or officer, who is in charge of the affairs of the company.

#### Proof of entries in records or documents

- 243.(1) Entries in the records, or other documents, in the custody of an income tax authority shall be admitted in evidence in any proceeding for the prosecution of any person for an offence under this Chapter.
- (2) The entries referred to in sub-section (1) may be proved by the production of -
  - (a) the records or other documents (containing such entries) in the custody of the income tax authority; or
  - (b) a copy of the entries certified by that authority, as true copy of those contained in the records or other documents in its custody.

#### Presumption as to assets, books of account, etc., in certain cases

244. The provisions of section 277 shall, so far as may be, apply in relation to any material found in the possession or control of any person, if the material-
  - (a) have been seized under section 139 or requisitioned under section 140; and
  - (b) are tendered by the prosecution in evidence against-
    - (i) such person; or
    - (ii) such person and the other person referred to in section 241.

#### Presumption as to culpable mental state

- 245.(1) The Court shall presume the existence of a culpable mental state on the part of the accused in a prosecution for any offence under this Code which requires such mental state on the part of the accused.
- (2) It shall be a defence for the accused to prove the fact that he had no culpable mental state with respect to the act charged as an offence in that prosecution.
- (3) For the purposes of this section “culpable mental state” includes intention, motive, knowledge of a fact, or belief in, or reason to believe, a fact.
- (4) For the purposes of this section, a fact is said to be proved when the court believes that its existence is established by a preponderance of probability.

### Prosecution to be at the instance of Chief Commissioner or Commissioner

- 246.(1) A person shall not be proceeded against for an offence under sections 230 to 241 except with the previous sanction of the Commissioner or Commissioner (Appeals).
- (2) The Chief Commissioner may issue such instruction, or direction, to the aforesaid income-tax authorities as he may deem fit for institution of proceeding under this sub-section.
- (3) The Chief Commissioner may compound, either before or after the institution of proceeding, an offence under this Chapter at the prescribed rates.
- (4) The Board may issue order, instruction or direction (including instruction or direction to obtain the previous approval of the Board) to any income-tax authority for the proper composition of offences under this section.
- (5) An offence in relation to which a punishment has been awarded by a court shall not be compounded.
- (6) Any statement made, or account or other document produced, by a person before any income-tax authority, other than an Inspector, shall be admissible as evidence for the purpose of any proceeding which has been taken against the person under sub-section (1), regardless of the fact that the offence in respect of which such proceeding was taken would be compounded.

### Certain offences to be non-cognizable

247. An offence punishable under section 234, section 235, section 236, section 239 or section 241 shall be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, 1973, regardless of anything contained in that Code.

### Disclosure of information by public servants

- 248.(1) If a public servant furnishes any information, or produces any document, in contravention of the provisions of section 268, he shall be punishable with imprisonment for a term which may extend to six months, and with fine.
- (2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government, which may be accorded only after giving such public servant an opportunity of being heard.

## CHAPTER - XIV ADVANCE RULING

### Definitions

249. In this Chapter, unless the context otherwise requires,-
- (a) **“advance ruling”** means a ruling by the Authority on a question raised by the applicant under section 252 within the scope as specified under section 250;
- (b) **“applicant”** means any person who makes an application under sub-section (1) of section 252;
- (c) **“application”** means an application made to the Authority under sub-section (1) of section 252;
- (d) **“Authority”** means the Authority for Advance Rulings constituted under section 251;
- (e) **“Chairman”** means the Chairman of the Authority;
- (f) **“Member”** means a Member of the Authority and includes the Chairman.

### Scope of Ruling

250. An applicant, specified in column (2) of the Table 9, may seek ruling on such matter as specified in the corresponding entry of column (3) of the said Table.

TABLE 9

Sr.No.	Applicant	Scope of ruling
(1)	(2)	(3)
(i)	Non-resident	A determination in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant, and such determination shall include the determination of any question of law, or of fact, specified in the application
(ii)	Resident	A determination in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken, or is proposed to be undertaken, by the applicant with such non-resident, and such determination shall include the determination of any question of law, or of fact, specified in the application
(iii)	Any class of residents, as notified by the Central Government in the Official Gazette in this behalf.	A determination in respect of an issue relating to computation of tax bases which is pending before any income-tax authority, or the Appellate Tribunal, and such determination shall include the determination of any question of law or of fact relating to such computation of tax bases specified in the application.

#### Authority for Advance Ruling

- 251.**(1) The Central Government shall constitute an Authority for Advance Ruling for the purposes of pronouncing an advance ruling.
- (2) The Authority shall consist of the following Members appointed by the Central Government, namely:-
- (a) a Chairman, who is a retired Judge of the Supreme Court;
  - (b) an officer of the Indian Revenue Service who is a Chief Commissioner;
  - (c) an officer of the Indian Legal Service who is an Additional Secretary to the Government of India.
- (3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.
- (4) The Central Government shall provide the Authority with such officers and staff, as may be necessary, for the efficient exercise of the powers of the Authority under this Code.
- (5) The office of the Authority shall be located in Delhi.
- (6) No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned, or shall be invalid, on the ground merely of the existence of any vacancy, or defect, in the constitution of the Authority.

### Procedure for advance ruling

- 252.**(1) An applicant may make an application for seeking advance ruling, under this Chapter, stating the question on which the advance ruling is sought.
- (2) The application shall be made in such form and manner as may be prescribed, and be accompanied by a fee of two thousand five hundred rupees.
- (3) An applicant may withdraw an application within thirty days from the date of filing of the application.
- (4) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records.
- (5) The Authority may, after examining the application and the records called for, by an order in writing, either allow, or reject, the application.
- (6) No application shall be rejected under sub-section (5) unless an opportunity has been given to the applicant of being heard and reasons for such rejection shall be given in that order.
- (7) The Authority shall not allow the application where the question raised in the application,—
- (a) is already pending before any income-tax authority, Appellate Tribunal or any court;
  - (b) involves determination of fair market value of any property;
  - (c) relates to a transaction or issue which is designed prima facie for the avoidance of income-tax.
- (8) However, in the case of any person falling with the class of persons notified under section 250, the Authority may allow the application even if the question raised therein is pending before any income-tax authority or Appellate Tribunal.
- (9) A copy of every order made under sub-section (5) shall be sent to the applicant and to the Commissioner.
- (10) The Authority shall, in a case where an application is allowed under sub-section (5), pronounce its advance ruling on the question specified in the application, after examining such further material as may be placed before it by the applicant or obtained by the Authority, .
- (11) The Authority shall, before pronouncing its Advance Ruling, provide an opportunity of being heard to the applicant or to the Commissioner.
- (12) The Authority shall pronounce its Advance Ruling in writing within six months of the receipt of the application.
- (13) A copy of the Advance Ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

### Income-tax authority or Appellate Tribunal not to proceed in certain cases

- 253.** No income-tax authority, or the Appellate Tribunal, shall proceed to decide any issue in respect of which an application has been made by a person falling with the class of persons notified under section 250.

### Applicability of Advance Ruling

- 254.**(1) The Advance Ruling pronounced by the Authority under section 252 shall be binding only -
- (a) on the applicant in whose case the Advance Ruling has been pronounced;
  - (b) in respect of the transaction in relation to which the Advance Ruling has been pronounced; and
  - (c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

- (2) However, the Advance Ruling referred to in sub-section (1) shall not be binding, if there is a change in law, or fact, on the basis of which the Advance Ruling has been pronounced.

#### **Advance Ruling to be void in certain circumstances**

- 255.(1) The Authority may, by order, declare an Advance Ruling to be void ab initio if it finds that the Ruling has been obtained by the applicant by fraud or misrepresentation of facts.
- (2) Upon declaring the Ruling to be void ab initio, all the provisions of this Code shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.
- (3) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

#### **Powers of the Authority**

- 256.(1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 138 of this Code.
- (2) The Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, but not for the purposes of Chapter XXVI of the said Code.
- (3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and for the purpose of section 190 of the said Code.

#### **Procedure of Authority**

257. The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Code.

## **PART - G GENERAL CHAPTER - XV**

#### **Agreement with foreign countries**

258. (1) The Central Government may enter into an agreement with the Government of any other country—
  - (a) for the granting of relief in respect of -
    - (i) income on which income-tax has been paid both under this Code and under the corresponding law in force in that country; or
    - (ii) income-tax chargeable under this Code and under the corresponding law in force in that country to promote mutual economic relations, trade and investment;
  - (b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country;
  - (c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country, or investi-gation of cases of such evasion or avoidance;
  - (d) for recovery of income-tax under this Act and under the corresponding law in force in that country; or

- (e) for carrying out any other purpose of this Act or the corresponding law in force in that country.
- (2) The Central Government may enter into an agreement with the Government of any specified territory outside India for the purposes specified in sub-section (1).
- (3) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India for the purposes specified in sub-section (1).
- (4) The Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreements.
- (5) A person shall not be entitled to claim relief under the provisions of the agreement unless a certificate of his being a resident in the other country or specified territory is obtained by him from the tax authority of that country or specified territory, in the prescribed form.
- (6) The provisions of this Code shall not be regarded as discriminatory against the foreign company merely on the consideration that the liability of the foreign company to pay tax is calculated at a rate higher than the rate at which the liability of a domestic company is calculated.
- (7) Any term used in the agreement, but not defined in this Code or in the agreement referred to in sub-section (1), shall have the meaning assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, having regard to the fact that the meaning is not inconsistent with the provisions of this Code or the Agreement.
- (8) For the purposes of determining the relationship between a provision of a treaty and this Code,-
  - (a) neither the treaty nor the Code shall have a preferential status by reason of its being a treaty or law; and
  - (b) the provision which is later in time shall prevail.

### **Permanent account number**

- 259.**(1) Every prescribed person shall make an application for the allotment of a permanent account number and the applicant shall be allotted a permanent account number.
- (2) Any person not falling under sub-section (1) may make an application for a permanent account number and he shall also be allotted a permanent account number.
  - (3) A permanent account number may, having regard to the nature of transactions as may be prescribed, be allotted to any other person, whether or not an application is made by him.
  - (4) Any person who has been allotted a permanent account number shall quote the number in the transactions, or documents, as may be prescribed.
  - (5) The Board shall prescribe the following in respect of the permanent account number:-
    - (a) the form and the manner in which an application may be made for the allotment of a permanent account number and the particulars which such application shall contain;
    - (b) the income-tax authority, or any other person, authorised to receive the application or allot the permanent account number;
    - (c) the categories of transactions in relation to which Permanent Account Numbers shall be quoted by every person in the documents pertaining to such transactions;
    - (d) the categories of documents in which such numbers shall be quoted by every person;
    - (e) class, or classes, of persons to whom the provisions of this section shall not apply;



- (f) the form and the manner in which the person who has not been allotted a Permanent Account Number shall make his declaration;
- (g) the manner in which the Permanent Account Number shall be quoted in respect of the categories of transactions referred to in clause (c); and
- (h) any other matters connected therewith.

### **Tax account number**

- 260** (1) Every person liable to deduct tax at source, or collect tax at source, shall make an application for the allotment of a tax account number and the applicant shall be allotted a tax account number.
- (2) Any person who has been allotted a tax account number shall quote the number in the transactions, or documents, as may be prescribed.

### **Document Identification Number**

- 261** (1) The Department, every income tax authority, or any other person acting on behalf of the Department or the income tax authority, shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.
- (2) Any notice, order, letter or any correspondence, issued by the Department, any income-tax authority or any other person acting on behalf of the Department or the income tax authority, shall be treated as invalid and shall be deemed never to have been issued if it does not bear a Document Identification Number referred to in sub-section (1).
- (3) The Department, every income tax authority, or any other person acting on behalf of the Department or the income tax authority, shall accept any document, letter or correspondence from any person only after allotting and quoting a computer generated Document Identification Number.
- (4) Any document, letter or correspondence, received by the Department, any income-tax authority or any other person acting on behalf of the Department or the income tax authority, shall be treated as invalid and shall be deemed never to have been received if it does not bear a Document Identification Number referred to in sub-section (3).

### **Certain transfers to be void**

- 262.**(1) A charge on, or transfer of, any asset of a person in favour of any other person, shall be void as against any claim in respect of any sum payable by the person under this Code, if the person creates a charge on, or transfers, any of his asset in favour of the other person during the pendency of any proceeding under this Code or after the completion thereof.
- (2) The charge, or transfer, referred to in sub-section (1) shall not be void, if it is made—
- (a) for adequate consideration and,-
    - (i) without notice of the pendency of such proceeding; or
    - (ii) without notice of such sum payable by the assessee; or
  - (b) with the previous permission of the Assessing Officer.
- (3) This section applies to cases where the amount of sum payable, or likely to be payable, under this Code exceeds five thousand rupees and the asset charged, or transferred, exceed ten thousand rupees in value.
- (4) For the purposes of this section, “asset” shall not include any business trading asset.



### **Provisional attachment to protect revenue in certain cases**

- 263.**(1) An Assessing Officer may attach provisionally, by order in writing, any property belonging to the assessee in the manner provided in the Fifth Schedule, if he is of the opinion that it is necessary to do so for the purpose of protecting the interest of the revenue.
- (2) The order referred to in sub-section (1) shall be issued with the prior approval of the Chief Commissioner or Commissioner.
- (3) Every such order shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1).
- (4) The Chief Commissioner or Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

### **Service of notice generally**

- 264.**(1) The service of any notice, summon, requisition, order or any other communication under this Code (hereinafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,-
- (a) by post or by such courier service as may be approved by the Board;
- (b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons;
- (c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
- (d) by any other means of transmission of documents (including fax message or electronic mail message) as provided by rules made by the Board in this behalf.
- (2) A notice, requisition, order or any communication under this Code which is sent by post, or courier service, shall be deemed to have been served on the person to whom it is addressed on the fifth day after the day on which the notice, requisition, order or communication is sent.
- (3) The provision of sub-section (2) shall apply regardless of the fact that the notice, requisition, order or communication has not been actually received by the person.
- (4) However, the person shall, on an application made by him, be entitled to a copy of the notice, requisition, order or communication.
- (5) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

### **Authentication of notices and other documents**

- 265.**(1) A notice or any other document required to be issued, served or given for the purposes of this Code by any income-tax authority shall be authenticated in manuscript by that authority.
- (2) Every notice or other document to be issued, served or given for the purposes of this Code by any income-tax authority shall be deemed to be authenticated, if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.
- (3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).

### **Notice deemed to be valid in certain circumstances**

- 266.**(1) A notice which is required to be served upon a person for the purposes of assessment under this Code shall be deemed to have been duly served upon him in accordance

with the provision of this Code if the person has appeared in any proceeding or co-operated in any enquiry relating to an assessment.

- (2) The person, referred to in sub-section (1), shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was -
  - (a) not served upon him;
  - (b) not served upon him in time; or
  - (c) served upon him in an improper manner.
- (3) However, the provisions of this section shall not apply, if the assessee has raised the objection before the completion of the assessment.

#### **Service of notice when family is disrupted or unincorporated body is dissolved**

- 267.(1) Any notice under this Code in respect of the tax bases of a Hindu family shall, in a case where a finding of total partition has been recorded by the Assessing Officer under section 175 in respect of any Hindu family, be served on the person who was the last manager of the Hindu family.
- (2) However, if the last manager of the Hindu family is dead, then the notice shall be served on all adults who were members of the Hindu family immediately before the partition.
- (3) The notice under this Code, in respect of the tax bases of an unincorporated body, shall, in a case where the unincorporated body is dissolved, may be served on any person who was a participant (not being a minor) immediately before its dissolution.

#### **Publication of information respecting assessee in certain cases**

- 268.(1) The Central Government may, if it is of the opinion that it is necessary, or expedient, in the public interest, cause to be published in any manner the name and any other particular relating to any proceeding, or prosecution, under this Code in respect of-
  - (a) any assessee;
  - (b) any participant of an unincorporated body; or
  - (c) any director, managing agent, secretary, treasurer, or manager of the company.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Code until the time for presenting an appeal to the Commissioner (Appeals) has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

#### **Appearance by registered valuer in certain matters**

- 269.(1) Any assessee who is entitled, or required, to attend before any income-tax authority, or the Appellate Tribunal, in connection with any matter relating to the valuation of any asset, may attend through a registered valuer.
- (2) However, the provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath, or affirmation, under section 138.

#### **Appearance by authorised representative**

- 270.(1) Any assessee who is entitled, or required, to attend before any income-tax authority, or the Appellate Tribunal, in connection with any proceeding under this Code, may attend through an authorised representative.
- (2) However, the provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath, or affirmation, under section 138.

- (3) For the purposes of this section, “authorised representative” means a person authorised by the assessee in writing to appear on his behalf, being
  - (a) a person related to the assessee in any manner, or a person regularly employed by the assessee;
  - (b) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;
  - (c) any legal practitioner who is entitled to practice in any civil court in India; or
  - (d) an accountant;
  - (e) any person who has passed any accountancy examination recognised in this behalf by the Board; or
  - (f) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.
- (4) The following persons shall not be qualified to represent an assessee under sub-section (1):-
  - (a) a person who has been dismissed or removed from Government service;
  - (b) a legal practitioner, or an accountant, who is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him;
  - (c) a person, not being a legal practitioner or an accountant, who is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority.
- (5) The Chief Commissioner may, by an order in writing, specify the period of disqualification under sub-section (4), having regard to the nature of misconduct.

#### **Rounding off of tax bases, tax, etc.**

- 271.(1) The amount of tax base computed in accordance with the foregoing provisions of this Code shall be rounded off to the nearest multiple of hundred rupees.
- (2) Any amount payable, or receivable, by the assessee under the provisions of this Code shall be rounded off to the nearest multiple of ten rupees.
- (3) The Board may prescribe the method of rounding off under sub-section (1) or sub-section (2).

#### **Indemnity**

272. Every person deducting, retaining, or paying any tax in pursuance of this Code in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof.

#### **Power to tender immunity from prosecution**

- 273.(1) The Central Government may tender immunity to any person from-
  - (a) prosecution for any offence under this Code, the Indian Penal Code, or any other Central Act for the time being in force; and
  - (b) the imposition of any penalty under this Code.
- (2) The immunity under sub-section (1) shall be granted by the Central Government, if-
  - (a) the person makes a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income;
  - (b) it is of the opinion that it is necessary, or expedient, so to do; and
  - (c) the reasons for the opinion is recorded in writing.
- (3) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from-
  - (a) prosecution for any offence in respect of which the tender was made; or

- (b) the imposition of any penalty under this Code.
- (4) The immunity granted under this section shall be deemed to have been withdrawn, if the Central Government records a finding to the effect that the person to whom the immunity has been tendered has -
  - (a) willfully concealed any particular which has the effect of altering the opinion formed under sub-section (2);
  - (b) given any false evidence; or
  - (c) not complied with any condition on which the tender was made.
- (5) The person, whose immunity has been withdrawn under sub-section (4), may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Code to which he would otherwise have been liable.

### **Cognizance of offences**

- 274.** No court inferior to that of a presidency magistrate or a magistrate of the First Class shall try any offence under this Code.

### **Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply**

- 275.** The provisions of section 360 of the Code of Criminal Procedure, 1973, or the Probation of Offenders Act, 1958, shall not apply to a person convicted of an offence under this Code, if the person is of eighteen years of age or more.

### **Return of tax base, etc., not to be invalid on certain grounds**

- 276.** A return of tax bases, assessment, notice, summon or any other proceeding, under this Code shall be deemed to be valid, regardless of the fact that there is a mistake, defect or omission in the return of tax bases, assessment, notice, summon or other proceeding, if the return of income, assessment, notice, summon or any other proceeding is in substance and effect in conformity with, or according to the intent and purpose of, this Code.

### **Presumption as to material found**

- 277.**(1) For the purposes of any proceeding under this Code, where any material found in the possession, or control, of any person in the course of a search under section 139 or survey under section 144, it shall be presumed that-
- (a) the material belongs to such person;
  - (b) the contents of the material, being books of account and other documents, are true;
  - (c) the signature and every other part of the books of account and other documents which purport to be in the handwriting of any particular person, or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting; and
  - (d) a document which purport to be stamped, executed or attested, it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.
- (2) The presumption under sub-section (1) shall also apply to a case, where any material has been delivered to the requisitioning officer in accordance with the provisions of section 140 as if they had been found in the possession, or control, of the person referred to in section 140.

**Bar of suits in civil courts**

- 278** (1) No suit shall be brought in any civil court to set aside, or modify, any proceeding taken, or order made, under this Code.
- (2) No prosecution, suit or other proceeding shall lie against the Government, or any officer of the Government, for anything in good faith done, or intended to be done, under this Code.

**Power to rescind**

- 279.**(1) The Central Government, the Board, or any income tax authority, shall have all the powers to rescind any notification, approval or order issued by it under any provision of this Code for reasons to be recorded in writing.
- (2) The powers conferred under sub-section (1) shall be exercised only after the assessee has been given a reasonable opportunity of showing cause against the proposed withdrawal.

**Power to make rules**

- 280.**(1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Code.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :—
- (a) the characterization, timing and the situs of any income and expenditure;
  - (b) the ascertainment and determination of any class of income;
  - (c) the manner in which and the procedure by which the income shall be arrived at, in the case of—
    - (i) agriculture income;
    - (ii) a person residing outside India;
    - (iii) a person whose total income includes income referred to in section 8;
  - (d) the determination of the amount of expenditure allowable under this Code in such manner, to such extent, and on such basis and conditions, as appears to the Board to be proper and reasonable;
  - (e) the methods by which an estimate of any income liable to tax, or expenditure liable to deduction, may be made, if such income or expenditure can not be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable;
  - (f) the form and manner in which any document, application, claim, return or information may be made or furnished and the fees that may be levied in respect of any document, application or claim;
  - (g) the class or classes of persons who shall be required to furnish any document, application, claim, return or information in electronic form;
  - (h) the form and manner in which a document, application, claim, return or information may be furnished electronically;
  - (i) the document, statement, receipt, certificate or report which, regardless of anything to the contrary contained in this Code, may not be furnished along with the return but shall be produced before the Assessing Officer on demand;
  - (j) the computer resource or the electronic record to which a document, application, claim, return or information may be transmitted electronically;
  - (k) the manner in which any document, application, claim, return or information required to be filed under this Code may be verified;
  - (l) the authority, agency or organisation who may receive any application, claim, return or information on behalf of the Board or the Department;

- (m) the procedure to be followed in calculating interest payable by assesseees or interest payable by Government to assesseees under any provision of this Code, including the rounding off of the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assesseees may be ignored;
  - (n) the form and manner in which any appeal or cross-objection may be filed under this Code, the fee payable in respect thereof and the manner in which intimation of any such order as is referred to in clause (d) of sub-section (3) of section 184 may be served;
  - (o) the circumstances in which, the conditions subject to which and the manner in which, the Commissioner (Appeals) may permit an appellant to produce evidence which he did not produce or which he was not allowed to produce before the Assessing Officer;
  - (p) the maintenance of a register of persons referred to in section 270, other than legal practitioners or accountants, practising before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (4) of that section;
  - (q) the issue of certificate verifying the payment of tax by assesseees;
  - (r) the authority to be prescribed for any of the purposes of this Code;
  - (s) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Code; and
  - (t) any other matter which by this Code is to be, or may be, prescribed.
- (3) Any order made, proceeding initiated or conducted, or liability or obligation discharged, in accordance with the Rules framed under this section shall be deemed to be duly made, initiated, conducted or discharged, in accordance with the provisions of this Code.
- (4) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Code, to the rules or any of them and, unless the contrary is permitted, no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.

### **Rules and certain notifications to be placed before Parliament**

- 281.**(1) The Central Government shall cause to be laid before each House of Parliament, while it is in session for a total period of thirty days, every rule, notification, approval, circular or order issued, and scheme framed, by the Central Government or the Board under any provision of this Code.
- (2) The rule, notification, approval, circular, order or scheme shall be laid as soon as may be after they are made or issued.
- (3) The total period of thirty days referred to in sub-section (1) may be comprised in one session or in two or more successive sessions.
- (4) The rule, notification, approval, circular, order or scheme shall stand modified, or cease to have effect, if both Houses agree to carry out any modification thereto or agree that it should not be made, issued or granted.

- (5) However, any such modification, or annulment, shall be without prejudice to the validity of anything previously done under that rule, notification, approval, circular, order or scheme.

### Repeals and savings.

- 282.** (1) The Income-tax Act, 1961, is hereby repealed.
- (2) Regardless of the repeal of the Income-tax Act, 1961 (hereinafter referred to as the repealed Act),—
- (a) where a return of income has been filed before the commencement of this Code by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Code had not been enacted;
  - (b) where a return of income is filed after the commencement of this Code, otherwise than in pursuance of a notice under section 148 of the repealed Act, by any person for the assessment year ending on the 31st day of March, 2011, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Code;
  - (c) any proceeding pending on the commencement of this Code before any income-tax authority, the Appellate Tribunal or any court, by way of appeal, reference, or revision, shall be continued and disposed of as if this Code had not been enacted;
  - (d) where in respect of any assessment year after the year ending on the 31st day of March, 2000,—
    - (i) a notice under section 148 of the repealed Act had been issued before the commencement of this Code, the proceedings in pursuance of the notice may be continued and disposed of as if this Code had not been enacted;
    - (ii) any income liable to tax has escaped assessment within the meaning of that expression in section 166 and no proceedings under section 147 of the repealed Act in respect of any such income are pending at the commencement of this Code, a notice under section 166 may be issued with respect to that financial year and all the provisions of this Code shall apply accordingly;
  - (e) any proceeding for the imposition of a penalty in respect of any assessment completed before the first day of April, 2010, may be initiated and any such penalty may be imposed as if this Code had not been enacted;
  - (f) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 2011, or any earlier year, which is completed on or after the 1st day of April, 2010, may be initiated and any such penalty may be imposed under this Code;
  - (g) any election or declaration made, or option exercised, by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Code shall be deemed to have been an election or declaration made, or option exercised, under the corresponding provision of this Code;
  - (h) where, in respect of any assessment completed before the commencement of this Code, a refund falls due after such commencement, or default is made



after such commencement in the payment of any sum due under such completed assessment, the provisions of this Code relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

- (i) any sum payable under the repealed Act may be recovered under this Code, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;
  - (j) any agreement entered into under section 90 or section 90A of the repealed Act shall, so far as it is not inconsistent with section 258 of this Code, be deemed to have been entered into under section 258 of this Code and shall continue in force accordingly;
  - (k) any appointment made under any provision of the repealed Act, or the Central Board of Revenue Act, shall, so far as it is not inconsistent with the corresponding provisions of this Code, be deemed to have been made under the corresponding provision aforesaid and shall continue in force accordingly;
  - (l) any order made under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provisions of this Code, be deemed to have been made under the corresponding provision aforesaid and shall continue in force accordingly;
  - (m) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application, appeal, reference or revision to be made under this Code by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority;
  - (n) the deduction under section 80-IA, section 80-IAB, section 80-IB, section 80-IC, section 80-ID, section 80-IE or section 80-JJA of the repealed Act shall continue to be allowed under this Code if the assessee is eligible for such deduction for the assessment year beginning on the 1st day of April, 2010 so however that-
    - (i) the amount of profits eligible for deduction under the aforesaid provisions are calculated in accordance with the provisions of this Code; and
    - (ii) the period for which the deduction is allowed under the aforesaid provisions shall not include a period for which the deduction was otherwise not allowable under the repealed Act.
- (3) For the purposes of this section, “assessment year” shall have the same meaning assigned to it in the Income-tax Act, 1961 as it stood prior to its repeal.

### **Power to remove difficulties**

- 283.**(1) The Central Government may, by general or special order, do anything which appears to it to be necessary, or expedient, for the purpose of removing any difficulty which arises in giving effect to the provisions of this Code.
- (2) However, no order under sub-section (1) shall be inconsistent with the provision under which the difficulty arises.
  - (3) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations, or modifications, subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31<sup>st</sup> day of March, 2012, or any earlier year.
  - (4) For the purposes of this section, “assessment year” shall have the same meaning assigned to it in the Income-tax Act, 1961 as it stood prior to its repeal.



**PART - H**  
**DEFINITIONS**

**CHAPTER - XVI**

**Definitions**

284. In this Code, unless the context requires otherwise,-

1. **“absolute value”** means the numerical value without regards to its sign.
2. **“accountant”** -means
  - (a) a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and
  - (b) any person who is entitled to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956;
3. **“accrual”** in relation to income, expenditure or liability, with its grammatical variations, shall include income, expenditure or liability which has arisen;
4. **“accumulated profits”** in relation to dividend means -
  - (a) all profits of the company of three consecutive financial years immediately preceding the financial year in which its undertaking is compulsorily acquired in the case where the company is in liquidation consequent to such compulsory acquisition by,-
    - (i) the Government; or
    - (ii) a corporation owned or controlled by the Government under any law for the time being in force; and
  - (b) all profits of the company up to the date of distribution or payment of dividend or upto the date of liquidation, as the case may be, in any other case;
5. **“actual cost”** in relation to a business capital asset shall be the cost computed under section 42;
6. **“advance-tax”** means the advance income-tax payable in accordance with the provisions of section 204; and
7. **“advance ruling”** shall have the meaning assigned to it in section 249;
8. **“agreement”** includes any arrangement or understanding or action in concert, whether or not such arrangement, understanding or action, is-
  - (a) in writing;
  - (b) formal; or
  - (c) intended to be enforceable by legal proceedings;
9. **“agreement of association”** means,-
  - (a) a partnership deed in relation to a firm; or
  - (b) an oral, or written, agreement between the participants of any other unincorporated body;
10. **“agreement for non-compete”** means an agreement for,-
  - (a) not carrying out any activity in relation to any business; or
  - (b) not sharing any,-
    - (i) know-how, patent, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature; or
    - (ii) information or technique likely to assist in the trading or manufacture or processing of goods or provision for services;

11. **“agricultural income”** means the following income -
  - (a) any profits and gains derived from cultivation of agricultural land;
  - (b) any rent derived from any agricultural land;
  - (c) any rent derived from any farm house; and
  - (d) any income derived from saplings or seedlings grown in a nursery;
12. **“agricultural land”** means any land situated in India which is used for agricultural purposes and,-
  - (a) is assessed to land revenue in India; or
  - (b) is subject to a local rate assessed and collected by officers of the Government as such;
13. **“amalgamated company”** means -
  - (a) a company with which amalgamating company or companies merge; or
  - (b) a company formed as a result of merger of two or more amalgamating companies;
14. **“amalgamating company”** means-
  - (a) a company which merges with another company, or
  - (b) a company which merges with another company to form a new company;
15. **“amalgamating co-operative”** means-
  - (a) a co-operative which merges with another co-operative; or
  - (b) every co-operative merging to form a new co-operative;
16. **“amalgamation”** in relation to,-
  - (a) a company means the merger of an amalgamating company or companies with an amalgamated company, if
    - (i) all the assets and liabilities of the amalgamating company immediately before the merger become the assets and liabilities of the amalgamated company;
    - (ii) shareholders holding seventy five percent or more, in value of the shares in the amalgamating company (other than shares already held by the amalgamated company or its nominee or its subsidiary, immediately before the merger), become shareholders of the amalgamated company; and
    - (iii) the scheme of amalgamation is in accordance with the provisions of the Companies Act, 1956; and
  - (b) a co-operative society means the merger of an amalgamating co-operative with an amalgamated co-operative, if -
    - (i) all the assets and liabilities of the amalgamating co-operative immediately before the merger become the assets and liabilities of the amalgamated co-operative;
    - (ii) the members holding seventy-five per cent. or more voting rights in the amalgamating co-operative become members of the amalgamated co-operative; and
    - (iii) the shareholders holding seventy-five per cent or more in value of the shares in the amalgamating co-operative (other than the shares held by the amalgamated co-operative or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative; or
  - (c) an unincorporated body or a proprietary concern means the succession of an amalgamating unincorporated body or proprietary concern with an amalgamated company if,-

- (i) all the assets and liabilities of the body or concern relating to the business immediately before the succession become the assets and liabilities of the amalgamated company;
  - (ii) the participants of the body or the proprietor of the concern do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the amalgamated company;
  - (iii) the aggregate of the shareholding in the amalgamated company of the participants of the body or the proprietor of the concern, upon succession, is not less than fifty per cent of the total value of the shares in the company; and
  - (iv) in the case of an amalgamating unincorporated body, all the participants immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the body on the date of the succession;
17. **“Appellate Tribunal”** means the Appellate Tribunal constituted under section 187;
  18. **“approved fund”** means -
    - (a) an approved provident fund;
    - (b) an approved superannuation fund;
    - (c) an approved gratuity fund; or
    - (d) a fund established under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948;
    - (e) Deposit-Linked Insurance Fund;
  19. **“approved gratuity fund”** means a gratuity fund which has been approved by the Board in accordance with the scheme framed and prescribed by the Central Government in this behalf;
  20. **“approved provident fund”** means a provident fund which has been approved by the Pension Fund Regulatory Development Authority in accordance with the scheme framed and prescribed by the Central Government in this behalf;
  21. **“approved superannuation fund”** means a superannuation fund which has been approved by the Pension Fund Regulatory Development Authority in accordance with the scheme framed and prescribed by the Central Government in this behalf;
  22. **“arm’s length price”** shall have the meaning assigned in section 113;
  23. **“assessee”** means every person -
    - (a) who is required to file a return of his tax base;
    - (b) who files a return of his tax base, regardless of the fact that he is otherwise not required to do so;
    - (c) who is required to furnish any information or document under this Code;
    - (d) in respect of whom any proceeding under this Code has been initiated;
    - (e) by whom any tax, or any other sum of money, is payable under this Code;
    - (f) to whom any amount of refund is payable under this Code;
    - (g) who is deemed to be an assessee under any provision of this Code; or
    - (h) who is an assessee in default;
  24. **“assessee in default”** means, -
    - (a) an assessee who has failed to fulfill his obligation under this Code and has consequently failed to make payment of any amount due from him to the Central Government; or
    - (b) an assessee who is deemed to be assessee in default under any provision of this Code;

25. **“Assessing Officer”** means the Income Tax Officer, Assistant Commissioner, Assistant Director, Deputy Commissioner, Deputy Director, Joint Commissioner, Joint Director, Additional Commissioner or Additional Director, who is vested with the relevant jurisdiction by virtue of direction or order issued under section 177 or any other provision of this Code;
26. **“assessment”** includes -
  - (a) an intimation under section 155 if no communication has been served on the assessee under section 156;
  - (b) reassessment;
  - (c) any order under section 167 rectifying any mistake apparent from the record;
  - (d) any order giving effect to the directions of an Appellate Authority; and
  - (e) any order under section 194;
27. **“asset”** means
  - (a) a business asset; or
  - (b) an investment asset;
28. **“Assistant Commissioner”** means a person appointed to be an Assistant Commissioner of Income-tax under section 130;
29. **“associated concern”** shall have the meaning assigned to it in section 96;
30. **“Assistant Director”** means a person appointed to be an Assistant Director of Income-tax under section 130;
31. **“associated enterprise”** shall have the meaning assigned to it in section 113;
32. **“associated operation”** shall have the meaning assigned to it in section 113;
33. **“associated person”** shall have the meaning assigned to it in section 113;
34. **“Board”** means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 and notified by the Central Government for the purposes of this Code;
35. **“backward classes”** means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified, from time to time, by the Central Government or any State Government;
36. **“banking company”** means a company to which the Banking Regulation Act, 1949, applies;
37. **“block of assets”** means a group of business capital assets falling within a class of business capital assets, for which the same percentage of depreciation is prescribed;
38. **“books”** or **“books of account”** includes ledgers, day-books, cash books, account-books, stock register and other books, kept -
  - (a) in the written form;
  - (b) as data stored in a disc, floppy, tape or any other form of electro-magnetic data storage device; or
  - (c) as print outs of the data stored in any of the form referred to in clause (ii);
39. **“broken-period income”** means the income for the period commencing from the date on which the debt instrument is acquired by the person or the beginning of the

financial year, whichever is later, and ending on the date on which the security is sold, and calculated in the prescribed manner;

40. **“business” includes -**
  - (a) any trade, commerce or manufacture;
  - (b) any adventure, or concern of that nature;
  - (c) any profession; and
  - (d) any vocation;
41. **“business asset” means-**
  - (a) business trading asset; or
  - (b) business capital asset;
42. **“business capital asset” means,-**
  - (a) any capital asset self-generated in the course of business;
  - (b) any intangible capital asset in the nature of,-
    - (i) goodwill of a business,
    - (ii) a trade mark or brand name associated with the business,
    - (iii) a right to manufacture or produce any article or thing,
    - (iv) right to carry on any business,
    - (v) tenancy right in respect of premises occupied by the assessee and used by him for the purposes of his business, or
    - (vi) licence, right or permit (by whatever name called) acquired in connection with, or in the course of, any business;
  - (c) any tangible capital asset in the nature of a building, machinery, plant or furniture; or
  - (d) any other capital asset connected with or used for the purposes of any business of the assessee;
43. **“business connection”** in relation to a non-resident shall include any business activity carried out through a person who, acting on behalf of the non-resident,-
  - (a) has an authority to conclude contracts on behalf of the non-resident in India, and habitually exercises it, unless his activities are limited to the purchase of goods or merchandise for the non-resident;
  - (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers them on behalf of the non-resident; or
  - (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and its associated enterprise, and
44. **“business reorganisation”** means reorganisation of business of two or more residents, involving -
  - (a) an amalgamation;
  - (b) a merger under a scheme sanctioned and brought into force by the Central Government under the Banking Regulation Act, 1949; or
  - (c) a demerger;
45. **“business trading asset”** means stock-in-trade, consumable stores or raw materials held for the purposes of business;
46. **“capital asset”** means property of any kind held by an assessee other than business trading asset;

47. **“capital employed in the business”** in relation to actual cost means the aggregate of the paid-up share capital, debentures and long-term borrowings -
  - (a) in a case where the prescribed expenditure is incurred before the commencement of the business, as on the last day of the financial year in which the business of the company commences;
  - (b) in any other case as on the last day of the financial year in which the extension of the business is completed, or the new business commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the business or the setting up of the new business of the company;
48. **“capital gains”** means the income as computed under section 47;
49. **“Capital Gains Savings Scheme”** means the scheme framed and prescribed by the Central Government in this behalf;
50. **“card game and other game of any sort”** includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;
51. **“Chief Commissioner”** means a person appointed to be a Chief Commissioner of Income-tax or Director General of Income-tax under section 130;
52. **“child”** in relation to an individual, includes a step-child and an adopted child of that individual;
53. **“closely-held company”** means a company which is not a widely held company;
54. **“Coffee Board”** means the Coffee Board constituted under section 4 of the Coffee Act, 1942;
55. **“cold chain facility”** means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;
56. **“Colombo Declaration”** means a declaration issued in Colombo on the 21st day of December, 1991 by the Heads of State or Government of the Member Countries of South Asian Association for Regional Cooperation established on the 8th day of December, 1985 by the Charter of the South Asian Association for Regional Cooperation;
57. **“Commissioner (Appeals)”** means a person appointed to be a Commissioner of Income-tax (Appeals) under section 125;
58. **“Commissioner”** means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax under section 130;
59. **“communiao dos bens”** means the system of community of property under the Portuguese Civil Code of 1860 in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu;
60. **“company”** means-
  - (a) any Indian company,
  - (b) any body incorporated by or under the laws of a country outside India, or
  - (c) any person who is or was assessable or was assessed as a company under the Indian Income-tax Act, 1922, or the Income-tax Act, 1961;

61. **“Competent Investigating Authority”** means any income-tax authority prescribed as such;
62. **“Comptroller and Auditor-General of India”** means the Comptroller and Auditor General of India appointed under Article 148 of the Constitution of India;
63. **“computer software”** means-
  - (a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
  - (b) any customized electronic data or any product or service of similar nature, as may be notified by the Board;
64. **“Controller of Insurance”** shall have the meaning assigned to it in clause (5B) of section 2 of the Insurance Act, 1938;
65. **“converted property”** means -
  - (a) any property having been the separate property of an individual has been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family; or
  - (b) any property which has been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration;
66. **“co-operative bank”** shall have the meanings assigned to it in Part V of the Banking Regulation Act, 1949;
67. **“co-operative sector company”** means a company in which not less than fifty-one per cent of the paid up equity share capital is beneficially held by, one or more co-operative societies throughout the financial year;
68. **“co-operative society”** means a co-operative society registered under the Co-operative Societies Act, 1912 or under any State or Provincial Act for the time being in force for the registration of co-operative societies;
69. **“Cost Inflation Index”** in relation to a financial year means the index as the Central Government may specify by Notification in the Official Gazette, having regard to seventy-five per cent. of the average rise in the consumer price index for urban manual employees for the immediately preceding financial year;
70. **“cost of construction”** in relation to a building means all expenditure incurred on-
  - (a) cost of land
  - (b) cost of construction of the property and
  - (c) cost of improvement of the property other than the cost met directly or indirectly by any other person or authority;
71. **“cost of the project”** in relation to actual cost means the actual cost of the fixed assets, being land, buildings (including expenditure on development of land and buildings), leaseholds, plant, machinery, furniture, fittings and railway sidings, which are shown in the books of the assessee -
  - (a) in a case where the prescribed expenditure is incurred before the commencement of the business, as on the last day of the financial year in which the business of the assessee commences;
  - (b) in any other case, as on the last day of the financial year in which the extension of the business is completed, or the new business commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the business or the setting up of the new business of the assessee;



72. **“cultivation”** includes any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;
73. **“current income from ordinary sources”** means the net result of the aggregation under sub-section (3) of section 58;
74. **“current income from the special source”** means the income referred to in sub-section (2) of section 59;
75. **“date of setting up of a business”** means -
- in the case of business of manufacturing, production or processing of goods, the date on which the manufacture, production or processing of the goods begins after successful trial run of the plant; or
  - in any other case, the date on which it is ready to commence its commercial operations;
76. **“debt”** includes a loan or borrowing;
77. **“debt instrument”** means a paper or electronic obligation that enables the borrower to raise funds by promising to repay the lender, or investor, in accordance with the terms of a contract and includes note, bond, certificate, mortgage, lease, loan, borrowing or other agreement between the borrower and the lender;
78. **“deduction of tax at source”** or **“collection of tax at source”** with all their grammatical variations, mean deduction or collection of tax under Chapter XI;
79. **“deductor”** means a person responsible for making any payment in respect of which he is liable to deduct tax at source under sub-chapter A of Chapter-XI;
80. **“demerged company”** means -
- the company whose undertaking is transferred, pursuant to a demerger, to a resulting company; or
  - the authority or the body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, which is split up or reconstructed, to form a resulting company;
81. **“demerger”** means -
- the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of one or more of its undertakings to any resulting company, if-
    - all the assets and liabilities of the undertaking or undertakings immediately before the transfer become the assets and liabilities of the resulting company;
    - the assets and the liabilities are transferred at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer;
    - the resulting company issues, in consideration of the transfer, its equity shares to the shareholders of the demerged company on a proportionate basis;
    - the shareholders holding seventy-five per cent or more, in value of the shares in the demerged company (other than shares already held by the resulting company or its nominee or its subsidiary, immediately before the transfer), become shareholders of the resulting company or companies, otherwise than as a result of the acquisition of the assets of the demerged company or any undertaking thereof by the resulting company;



- (v) the transfer of the undertaking is on a going concern basis; and
  - (vi) the transfer is in accordance with such other conditions as may be notified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purposes; or
- (b) the splitting up, or the reconstruction, of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company to form a resulting company, in accordance with the conditions as may be notified by the Central Government;
82. **“Deposit-linked Insurance Fund”** means a fund established under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948;
83. **“Deputy Commissioner”** means a person appointed to be a Deputy Commissioner of Income-tax under section 130;
84. **“Deputy Director”** means a person appointed to be a Deputy Director of Income-tax under section 130;
85. **“Director”** means a person appointed to be a Director of Income-tax under section 130;
86. **“Director General”** means a person appointed to be a Director General of Income-tax under section 130;
87. **“director”, “manager” and “managing agent”**, in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956;
88. **“Dispute Resolution Panel”** means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;
89. **“dividend”** distributed or paid by a company,-
- (a) shall include the following, namely:-
    - (i) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;
    - (ii) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to shareholders of its preference shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;
    - (iii) any distribution made to the shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;
    - (iv) any distribution to its shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated profits have been capitalised or not; and
    - (v) any payment by a closely-held company, to the extent of its accumulated profits, if such payment is -
      - (A) by way of advance or loan to a shareholder being the beneficial owner of equity shares holding not less than ten per cent of the voting power;
      - or

- (B) by way of advance or loan to any Hindu undivided family, or a firm, or an association of persons, or a body of individuals, or a company (hereafter in this clause referred to as the said concern), in which such shareholder is a member or a partner or a shareholder, and in which he has a substantial interest; or
- (C) to any person on behalf, or for the individual benefit, of such shareholder; and
- (b) shall not include the following, namely:-
- (i) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;
  - (ii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;
  - (iii) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956; and
  - (iv) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company);
90. **“dividend distribution tax”** means the tax chargeable under section 99;
91. **“document”** includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;
92. **“domestic company”** means a company which is resident in India;
93. **“disaster”** shall have the meaning assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005;
94. **“due date”** means,-
- (a) in relation to the return of tax bases, -
    - (i) the 30th June following the financial year if the person is not a company and does not derive any income from business; or
    - (ii) the 31st August following the financial year, in all other cases; or
  - (b) in relation to any other return, the date as may be prescribed for such return;
95. **“electoral trust”** means a trust so approved by the Board in accordance with rules made in this regard by the Central Government.
96. **“employer”** means an entity which controls and directs an individual under an express or implied contract of employment and is obligated to pay compensation to him;
97. **“equity oriented”** in relation to a scheme means the scheme -
- (a) of a Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder; and
  - (b) which invests sixty-five per cent or more of its investible funds in the form of equity shares in domestic companies, computed with reference to the annual average of the monthly averages of the opening and closing figures;
98. **“equity shares”** means equity shares within the meaning of section 85 of the Companies Act, 1956;

99. **“execution of an authorisation for search or requisition”**, with all its grammatical variations- an authorisation for search, or requisition, shall be deemed to have been executed,-
- (a) in the case of a search, on the conclusion of the search as recorded in the last panchnama drawn in relation to the person in whose case the authorisation has been issued; or
  - (b) in the case of requisition under section 140, on the date on which all the books of accounts, other documents or assets are received by the Requisitioning Officer;
100. **“ex-serviceman”** means -
- (a) a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, or
  - (b) in the case of a deceased or incapacitated ex-serviceman it includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependant upon such ex-serviceman immediately before his death or incapacitation;
101. **“fair market value”**, in relation to an asset, means such price as may be determined in accordance with the rules made under this Code;
102. **“family”** in relation to an individual, means-
- (a) the spouse and children of the individual; and
  - (b) the parents, brothers or sisters of the individual, if mainly dependant on the individual;
103. **“family pension”** means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of the death of the employee;
104. **“farm house”** means any building which fulfills all the following conditions -
- (a) it is situated on, or in the immediate vicinity of, the agricultural land;
  - (b) the building is used-
    - (i) as a dwelling house, store-house, or other out-building, for agricultural purpose; or
    - (ii) to carry out any process to render the produce raised or received by the owner fit to be taken to the market;and
  - (c) the building is -
    - (i) occupied by the cultivator or the receiver of rent-in-kind;or
    - (ii) owned and occupied by the receiver of rent;
105. **“fees for technical services”**
- (a) means any consideration (including any lump sum consideration) paid or payable directly or indirectly for -
    - (i) rendering of any managerial, technical or consultancy services;
    - (ii) provision of services of technical or other personnel; or
    - (iii) development and transfer of a design, drawing, plan or software, or any other service of similar nature; and

- (b) does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Income from employment”;
106. **“finance charges”** means -
- (a) any interest; or
  - (b) any incidental financial charges;
107. **“financial intermediary”** means stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996;
108. **“financial lease”** and its grammatical variation, means a lease transaction where-
- (a) contract for lease is entered into between two parties for leasing of a specific asset;
  - (b) such contract is for use and occupation of the asset by the lessee;
  - (c) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
  - (d) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;
109. **“financial year”** means -
- (a) the period beginning with the date of setting up of a business and ending with the 31st day of March following the date of setting up of such business;
  - (b) the period beginning with the date on which a source of income newly comes into existence and ending with the 31st day of March following the date on which such new source comes into existence;
  - (c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be;
  - (d) the period beginning with the 1st day of the financial year and ending with the date of retirement or death of a participant of the unincorporated body;
  - (e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or
  - (f) the period of twelve months commencing from the 1st day of April of the relevant year in any other case.
110. **“firm”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
111. **“foreign company”** means a company which is not a domestic company;
112. **“foreign currency”** shall have the meanings assigned to it in section 2 of the Foreign Exchange Management Act, 1999;
113. **“forward contract”** means a contract with an authorised dealer, as defined in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999), for providing a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract;
114. **“general public”** shall have the same meaning assigned to in section 96;

115. **“Global Depository Receipts”** means any instrument (by whatever name called)-
- created by the Overseas Depository Bank outside India against issue of foreign currency convertible bonds or ordinary shares, of a domestic company; and
  - issued to non-residents;
116. **“gross total income”** for a financial year means the aggregate of the gross total income from ordinary sources and the gross total income from special sources, for that financial year;
117. **“gross total income from ordinary sources”** of a financial year means the net result of the aggregation under sub-section (3) or sub-section (4) of section 58, for that financial year.
118. **“gross total income from the special source”** of a financial year means the net result of the aggregation under sub-section (2) or sub-section (3) of section 59, for that special source for that financial year.
119. **“head office expenditure”** means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of-
- rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;
  - salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;
  - traveling by any employee or other person employed in, or managing the affairs of, any office outside India; and
  - such other matters connected with executive and general administration as may be prescribed;
120. **“heavy goods vehicle”** shall have the meaning assigned to it in section 2 of Motor Vehicle Act, 1988;
121. **“horse race”** means a horse race upon which wagering or betting is made;
122. **“hospital”** includes a dispensary or a clinic or a nursing home;
123. **“house property”** means,-
- any building or land appurtenant thereto; or
  - any building along with any machinery, plant, furniture or any other facility if the letting of such building is inseparable from the letting of the machinery, plant, furniture or facility;
124. **“housing development company”** means any public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes;
125. **“housing-finance public company”** means a company,-
- which is a public company;
  - whose main object is carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes; and
  - which is registered in accordance with the Housing Finance Companies (NHB) Directions, 1989 given under section 30 and section 31 of the National Housing Bank Act, 1987;

126. **“however”** shall mean an alternative intention, or a contrast, with the previous section, sub-section, clause, sub-clause, item or phrase, as the case may be, and a modification of it under such circumstances as specified therein.
127. **“incidental financial charges”** means any fee, commission, brokerage, premium, tax payable or any other similar expenditure incurred for the purposes of borrowing or raising capital or incurring any debt or in respect of any credit facility which has not been utilized;
128. **“income”** includes,-
- (a) gross salary referred to in section 21;
  - (b) gross rent referred to in section 25;
  - (c) the amount of any accrual or receipt from the businesses referred to in column (2) of Table-1 in sub-section (2) of section 30;
  - (d) gross earnings from the business referred to in section 31;
  - (e) full value of the consideration received or accruing as a result of the transfer of any investment asset referred to in section 48;
  - (f) gross residuary income referred to in section 56;
  - (g) voluntary contributions received by any person other than an individual or a Hindu undivided family;
  - (h) any sum deducted at source on payment received, in accordance with the provisions of Chapter XI; and
  - (i) income of the nature referred to in column (3) of Table in Rule 3 of the First Schedule;
129. **“income from business”** means the profits of the business as computed under section 30;
130. **“income under the head ‘capital gains’ ”** means the income as computed under sub-sections (4) or (5) of section 47;
131. **“income under the head ‘income from business’ ”** means the income in respect of that head, as computed under sub-section (1) of section 58;
132. **“income from employment”** means the income as computed under sections 20;
133. **“income under the head ‘income from employment’ ”** means the income in respect of that head, as computed under sub-section (1) of section 58;
134. **“income from house property”** means the income as computed under section 24;
135. **“income under the head ‘income from house property’ ”** means the income in respect of that head, as computed under sub-section (1) of section 58;
136. **“income from residuary sources”** means the income as computed under section 55;
137. **“income under the head ‘income from residuary sources’ ”** means the income in respect of the head, as computed under sub-section (1) of section 58;
138. **“income-tax”** in relation to ,-
- (a) India, means the income-tax payable under section 2; and
  - (b) any foreign country, includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country;

139. **“Income Tax Department”** means the organisation of subordinate offices comprising all income-tax authorities and executive and ministerial staff employed in the execution of this Code;
140. **“Income Tax Officer”** means a person appointed to be an Income-tax Officer under section 130;
141. **“India”** means-
- (a) the territory of India as referred to in article 1 of the Constitution;
  - (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
  - (c) the air space above its territory and territorial waters; or
  - (d) the seabed and the subsoil underlying the territorial waters;
142. **“Indian company”** means a body corporate which,-
- (a) is registered or established by or under,-
    - (i) the Companies Act, 1956; or
    - (ii) a Central, State or Provincial Act;
    - (iii) any law relating to companies formerly in force in any part of India other than the State of Jammu and Kashmir;
    - (iv) any law for the time being in force in the State of Jammu and Kashmir; and
  - (b) has its registered or, as the case may be, principal office in India;
143. **“Indian income-tax”** means income-tax charged in accordance with the provisions of this Code;
144. **“Indian rate of tax”** means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Code but before deduction of any relief due under section 206, by the total income;
145. **“Indian ship”** shall have the same meaning assigned to it in clause (18) of section 3 of the Merchant Shipping Act, 1958;
146. **“infrastructure facility”** means the following facilities:-
- (a) a road including toll road, a bridge or a rail system;
  - (b) a highway project including housing or other activities being an integral part of the highway project;
  - (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system; and
  - (d) a port, airport, inland waterway or inland port;
147. **“Inspector of Income-tax”** means a person appointed to be an Inspector of Income-tax under section 130;
148. **“insurer”** means an Indian insurance company under clause (7A) of section 2 of the Insurance Act, 1938, which has been granted a certificate of registration under section 3 of that Act;
149. **“interest”** means any amount payable to any person (including any participant), in any manner, in respect of any borrowing or debt incurred or any other similar right or obligation;
150. **“interested person”** shall have the same meaning assigned to it in section 96;
151. **“investment asset”** means any capital asset which is not a business capital asset;



152. **“jewellery”** in relation to a capital asset, includes -
- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such previous metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
  - (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;
153. **“Joint Commissioner”** means a person appointed to be a Joint Commissioner of Income-tax, an Additional Commissioner of Income-tax, a Joint Director of Income-tax or an Additional Director of Income-tax under section 130;
154. **“Joint Director”** means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under section 130;
155. **“Keyman insurance policy”** means a life insurance policy taken by -
- (a) an employer on the life of an employee or a former employee; or
  - (b) a person on the life of another person who is, or was, connected in any manner whatsoever with the business of the first-mentioned person;
156. **“khadi”** and **“village industries”** have the meanings respectively assigned to them in the Khadi and Village Industries Commission Act, 1956 ;
157. **“know-how”** means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto);
158. **“legal representative”** has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;
159. **“liabilities”** in relation to a demerger or slump sale shall include-
- (a) the liabilities which arise out of the activities or operations of the undertaking;
  - (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and
  - (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the assessee as stand in the same proportion which the value of the assets transferred in a demerger or slump sale bears to the total value of the assets of such assessee immediately before the demerger or slump sale;
160. **“life insurer”** means an insurer who is wholly engaged in the business of providing assurance on the life of human beings;
161. **“light goods vehicle”** means a vehicle which is not a heavy goods vehicle;
162. **“local authority”** means-
- (a) Panchayat as referred to in clause (d) of article 243 of the Constitution;
  - (b) Municipality as referred to in clause (e) of article 243P of the Constitution;
  - (c) 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
  - (d) Cantonment Board as defined in section 3 of the Contonments Act, 1924;
163. **“long-term borrowings”** means-
- (a) moneys borrowed from the Government, a scheduled bank or a financial institution where the terms of the borrowings provide for the repayment during a period of not less than five years, or



- (b) moneys borrowed or debt incurred in a foreign country for the purchase of capital plant and machinery outside India, where the terms of the borrowings provide for the repayment during a period of not less than seven years;
164. **“long-term finance”** means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;
165. **“long term leasing”** means,-
- lease for a term of not less than twelve years; or
  - a lease which provides for the extension of the term ‘thereof’ by a further term or terms, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can so extended is not less than twelve years;
166. **“lottery”** includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
167. **“manufacture”**, with its grammatical variations, means a change in a non-living physical object or article or thing,-
- resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
  - bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;
168. **“material”** includes any books of account, document, money, bullion, jewellery or other valuable article or thing;
169. **“maximum marginal rate”** means the rate of income-tax applicable in relation to the highest slab of income in the case of an individual, as specified in the First Schedule;
170. **“medical authority”** means,-
- the medical authority referred to in clause (p) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or
  - such other medical authority as may be notified by the Central Government for this purpose.
171. **“mineral”** includes a group of associated minerals specified in Part A or Part B, respectively, of the Eighteenth Schedule;
172. **“mineral oil”** shall have the meaning assigned to it in the Eleventh Schedule;
173. **“mutual benefit finance company”** means a company, -
- which carries on, as its principal business, the business of acceptance of deposits from its members; and
  - which is a Nidhi or Mutual Benefit Society within the meaning of section 620A of the Companies Act, 1956;
174. **“mutual fund”** means,-
- a Mutual Fund registered as such under the Securities and Exchange Board of India Act, 1992;
  - a venture capital company; or
  - a venture capital fund.

175. **“NABARD”** means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;
176. **“National Housing Bank”** means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;
177. **“National Tax Tribunal”** means the National Tax Tribunal established under the National Tax Tribunal Act, 2005;
178. **“net worth”** shall,-
- (a) in relation to a demerged company, mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger; and
  - (b) in relation to an undertaking or division transferred under slump sale, means the value determined in the prescribed manner;
179. **“new investment asset”** means the new investment asset within the meaning of section 53;
180. **“New Pension System Trust”** means the New Pension System Trust established on the 27th day of February, 2008 under the provisions of the Indian Trusts Act, 1882;
181. **“non-filer”** in relation to a financial year means a person,-
- (a) who has not furnished,-
    - (i) a return of tax bases for the financial year; and
    - (ii) a return of tax bases for two immediately preceding financial years; and
  - (b) who has not been issued any notice under section 151 in respect of the relevant financial year and two immediately preceding financial years;
182. **“non-profit organisation”** shall have the same meaning assigned to it in section 96;
183. **“non-resident”** means a person who is not a resident;
184. **“non-resident deductee”** means a person who is non-resident in India and receives any amount which is liable to deduction of tax at source under Chapter XI;
185. **“notice”** means the legal instrumentality by which intimation is provided;
186. **“option”** in relation to sweat equity shares means a right but not an obligation, granted to an employee to apply for the sweat equity shares at a predetermined price;
187. **“original investment asset”** means an investment asset in respect of which deduction under section 53 is claimed;
188. **“Overseas Depository Bank”** means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company;
189. **“owner”** in relation to a house property and land appurtenant thereto shall include,-
- (a) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter;
  - (b) the holder of an impartible estate;
  - (c) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association; and

- (d) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882.
190. **“paid”** shall,-
- (a) in relation to “Income from business” or “Income from residuary sources”, mean incurred or actually paid, according to the method of accounting on the basis of which the income under those heads are computed; and
  - (b) in all other cases, mean actually paid;
191. **“participant”** means,-
- (a) a partner in relation to a firm; or
  - (b) a member in relation to an association of persons or body of individuals;
192. **“partner”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include,-
- (a) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008; and
  - (b) any person who, being a minor, has been admitted to the benefits of partnership;
193. **“partnership”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
194. **“pass-thru entity”** means,-
- (a) the New Pension System Trust ;
  - (b) mutual fund;
  - (c) approved provident fund;
  - (d) approved superannuation fund;
  - (e) life insurance company;
195. **“patent”, “patentee”** and **“controller”** in relation to patent shall have the meaning respectively assigned to them under section 2 of the Patents Act, 1970;
196. **“pension fund”** means a pension fund registered with an authority specified for this purpose;
197. **“permanent account number”** means a number allotted to a person under this Code for the purposes of identification of that person;
198. **“permanent establishment”** in relation to a non-resident includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;
199. **“permitted derivative transaction”** means any transaction in derivatives, if-
- (a) it is carried out electronically on screen-based systems of a recognised stock exchange;
  - (b) it is carried out by a bank or mutual fund or any other person, through a financial intermediary; and
  - (c) it is supported by a time stamped contract note issued by the financial intermediary to every client indicating in the contract note -
    - (i) the unique client identity number allotted under any relevant Act; and
    - (ii) the permanent account number allotted under this Code;
200. **“permitted financial institution”** means,-
- (a) a banking company or a scheduled bank;
  - (b) a non-banking financial company;

- (c) a public financial institution;
  - (d) State financial corporations;
  - (e) State industrial investment corporations; or
  - (f) a housing-finance development company;
201. **“permitted savings intermediaries”** means,-
- (a) approved provident fund;
  - (b) approved superannuation fund;
  - (c) life insurer; and
  - (d) New Pension System Trust;
202. **“permitted welfare activity”** shall have the meaning assigned to it in section 96;
203. **“person”** includes-
- (a) an individual;
  - (b) a Hindu undivided family;
  - (c) a company;
  - (d) a co-operative society;
  - (e) a firm;
  - (f) a non-profit organisation;
  - (g) an office, or establishment, of Central Government or the Government of a State;
  - (h) an association of persons;
  - (i) a body of individuals;
  - (j) a local authority;
  - (k) any other artificial juridical person; and
  - (l) any other society;
204. **“person having a substantial interest in a concern”**, with all its grammatical variation, means -
- (a) a person who is the beneficial owner (including the beneficial ownership held by one or more of his relatives, in case the person is an individual) of equity shares carrying not less than twenty per cent of the voting power, at any time during the financial year, in a concern being a company; and
  - (b) a person who is, at any time during the financial year, beneficially entitled (including the income which is beneficially entitled to one or more of his relative, in case the person is an individual) to not less than twenty per cent of the income in any other concern;
205. **“person of Indian origin”** means a person if he, or either of his parents, or any of his grand parents, was born in undivided India;
206. **“person responsible for making specified payment”** means,-
- (a) an employer, if the payment is in the nature of salary;
  - (b) any person, if the payment is in the nature specified in column 2 of the Third Schedule or the Fourth Schedule;
207. **“person with disability”** means,-
- (i) a person referred to in clause (t) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or
  - (ii) clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

208. **"person with severe disability"** means,-
- (i) a person with eighty per cent or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or
  - (ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
209. **"personal effect"** in relation to a capital asset means any movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependant on him, but excludes,-
- (a) jewellery;
  - (b) archaeological collections;
  - (c) drawings;
  - (d) paintings;
  - (e) sculptures; and
  - (f) any work of art;
210. **"perquisite"** means the following amenity, facility, privilege or service, whether convertible into money or not, provided directly or indirectly to the assessee by his employer, whether by way of reimbursement or otherwise:-
- (a) the value of any accommodation computed in the prescribed manner;
  - (b) any sum payable to effect an assurance on life or to effect a contract for an annuity;
  - (c) any sum payable to any permitted savings intermediaries;
  - (d) the value of any sweat equity share allotted or transferred, as on the date on which the option is exercised by the assessee;
  - (e) the value of any obligation which, but for payment by the employer, would have been payable by the assessee, computed in the prescribed manner; and
  - (f) the value of any other amenity, facility, privilege or service, computed in the prescribed manner;
211. **"plant"** includes ships, vehicles, books, scientific apparatus and surgical equipment but does not include tea bushes, livestock, buildings and furniture and fittings;
212. **"political party"** means a recognised political party under The Election Symbols (Reservation and Allotment) Order, 1968 issued vide S.O. 2959 dated 31st August, 1968, as amended from time to time.
213. **"predecessor"** in relation to a business reorganisation means -
- (a) the amalgamating company, in the case of amalgamation;
  - (b) the merging company in the case of business reorganisation referred to in sub-clause (b) of clause (44);
  - (c) the demerged company, in the case of demerger; or
  - (d) the unincorporated body or the proprietary concern, in the case of business reorganisation referred to in sub-clause (a) of clause (44);
214. **"preference shares"** means preference shares within the meaning of section 85 of the Companies Act, 1956;
215. **"pre-paid taxes"** means tax paid by way of -
- (a) tax deduction at source on payment received;
  - (b) tax collection at source on payment made;

- (c) advance-tax;
  - (d) self-assessment tax; or
  - (e) foreign tax credit;
216. **“prescribed”** means prescribed by rules made under this Code;
217. **“primary co-operative agricultural and rural development bank”** means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities;
218. **“principal officer”** in relation to a person, being a local authority or any other public body or a company or an unincorporated body, means-
- (a) the secretary, treasurer, manager or agent of the person, or
  - (b) any person connected with the management or administration of the person upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;
219. **“private discretionary trust”** means any entity, whether incorporated or not, which fulfills the following conditions:-
- (a) the shares of its beneficiaries are indeterminate or unknown;
  - (b) it is not a non-profit organisation; and
  - (c) it is not registered under any law of the Central, State or Provincial Government for the regulation of the religious endowments;
220. **“profits in lieu of, or in addition to, any salary”** includes-
- (a) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with his voluntary retirement or the termination of his employment or the modification of the terms and conditions relating thereto;
  - (b) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy, if any part of the contribution to the policy is made by his employer or former employer; and
  - (c) any amount due to or received, directly or indirectly, by any assessee from any person-
    - (i) before his joining any employment with that person; or
    - (ii) after cessation of his employment with that person;
221. **“public company”** shall have the meaning assigned to it in section 3 of the Companies Act, 1956;
222. **“public financial institution”** shall have the meaning assigned to it in section 4A of the Companies Act, 1956;
223. **“public sector bank”** means -
- (a) the State Bank of India constituted under the State Bank of India Act, 1955,
  - (b) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959,
  - (c) a corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or
  - (d) a corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;
224. **“public sector company”** means -
- (a) any corporation established by or under any Central, State or Provincial Act, or

- (b) a Government company as defined in section 617 of the Companies Act, 1956;
225. **“public servant”** shall have the same meaning as in section 21 of the Indian Penal Code, 1860;
226. **“rate of exchange”** means the rate of exchange determined or recognised by the Central Government for the conversion of Indian rupee into foreign currency or vice versa;
227. **“rate of tax of the other country”** means income-tax and surcharge or cess thereon, if any, actually paid in the other country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country;
228. **“rate in force”**, in relation to a financial year means the rate of income-tax specified for the relevant purpose -
- (a) in this Code;
  - (b) in the Finance Act of the relevant year; or
  - (c) in the relevant agreement entered into by the Central Government under section 258;
229. **“reassessment”** means any assessment of tax base in pursuance to a notice issued under section 166, whether or not,-
- (a) a return of tax bases has been filed before, or after, the issue of the notice; or
  - (b) an assessment of the tax base has been made before the issue of this notice;
230. **“recognised stock exchange”** means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose;
- 231 **“recognised commodity exchanges”** means a “registered association” as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952;
232. **“registered valuer”** means a person registered as such by the Board for determining the value of any asset in accordance with the procedure as may be prescribed;
233. **“relative”**, in relation to an individual, means -
- (a) spouse of the individual;
  - (b) brother or sister of the individual;
  - (c) brother or sister of the spouse of the individual;
  - (d) brother or sister of either of the parents of the individual;
  - (e) any lineal ascendant or descendant of the individual;
  - (f) any lineal ascendant or descendant of the spouse of the individual;
  - (h) spouse of the person referred to in sub-clauses (b) to (f); or
  - (g) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual;
234. **“remission or cessation of any liability”** shall include the remission or cessation of any liability,-
- (a) by a unilateral act by the assessee by way of writing off such liability in his account or creating a reserve (by whatever name called); or
  - (b) by virtue of there being no transaction with the creditor during the period of three years from the end of the financial year in which the last transaction took place;

235. **“rent”** in relation to a house property means any income derived, directly or indirectly, from letting of the property;
236. **“Reserve Bank of India”** means the Bank constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;
237. **“resident”** means a person who is resident in India within the meaning of section 4;
238. **“resident deductee”** means a person who is resident and receives any amount liable to deduction of tax at source under Chapter XI;
239. **“resulting company”** means -
- (a) one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger; or
  - (b) any authority, body, local authority or a company established, constituted or formed as a result of demerger;
240. **“royalty”** means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for-
- (a) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula, process, trade mark or similar property;
  - (b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark or similar property;
  - (c) the use of any patent, invention, model, design, secret formula, process, trade mark or similar property;
  - (d) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
  - (e) the use or right to use of any industrial, commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers 10 and 11 of Table in the Fourteenth Schedule, which is subjected to tax in accordance with the provision of that schedule;
  - (f) the use or right to use of transmission by satellite, cable, optic fiber or similar technology;
  - (g) the transfer of all or any rights (including the granting of a licence) in respect of:-
    - (i) any copyright, literary, artistic or scientific work; or
    - (ii) cinematographic films or work on films, tapes or any other means of reproduction; or
    - (iii) live coverage of any event;
  - (h) the rendering of any services in connection with the activities referred to in sub-clauses (a) to (g);
241. **“Rubber Board”** means the Rubber Board constituted under sub-section (1) of section 4 of the Rubber Board Act, 1947;
242. **“rural area”** means any area not being an urban area;
243. **“safe harbour”**, in relation to computation of arm’s length price, means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee;



244. **“salary”** includes,-

- (a) wages;
- (b) remuneration;
- (c) any allowance, concession or assistance;
- (d) any fees or commissions;
- (e) perquisites;
- (f) profits in lieu of, or in addition to, any salary;
- (g) any advance or arrear of salary;
- (h) any allowance granted to the employee to-
  - (i) meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides; or
  - (ii) compensate him for the increased cost of living;
- (i) any allowance or benefit, granted to the employee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;
- (j) any allowance in the nature of personal allowance granted to remunerate or compensate the assessee for performing duties of a special nature relating to his office or employment;
- (k) any amount receivable, directly or indirectly, by an employee from his employer, in connection with his voluntary retirement or termination of service or voluntary separation;
- (l) any payment received by an employee in respect of any period of leave not availed by him;
- (m) the contribution made by the employer in the financial year, to the account of an employee maintained with the permitted savings intermediaries referred to in sub-section (2) of section 66;
- (n) any contribution by the employer to any fund other than an approved fund or the interest, if any, on such contributions;
- (o) any annuity, pension or any commutation thereof;
- (p) any gratuity;

245. **“scheduled bank”** means any bank listed in the Second Schedule to the Reserve Bank of India Act, 1934;

246. **“Scheduled Caste”** and **“Scheduled Tribe”** shall have the meanings respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

247. **“scientific research and development”** shall mean systemic investigation and search in a field of technology, natural or applied science (including agriculture, animal husbandary or fisheries) if,-

- (a) it is carried out by the assessee by means of experiment or analysis;
- (b) it is in the nature of,-
  - (i) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view;
  - (ii) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view; or
  - (iii) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing materials, devices, products or processes, including incremental improvements thereto;and

- (c) it is not in the nature of ,-
- (i) market research or sales promotion;
  - (ii) quality control or routine testing of materials, devices, products or processes;
  - (iii) research in the social sciences or the humanities;
  - (iv) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas;
  - (v) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process;
  - (vi) style changes; or
  - (vii) routine data collection;
248. **“security”** shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
249. **“Securities and Exchange Board of India”** means the Board established under section 3 of the Securities and Exchange Board of India Act, 1992;
250. **“self-assessment tax”** means the tax paid after the financial year but before filing the return of tax bases;
251. **“senior citizen”** means an individual resident in India who is of the age of sixty-five years or more at any time during the financial year;
252. **“service”** means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, merchant banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging;
253. **“Sikkimese”** means,-
- (a) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (herein after referred to as the “Register of Sikkim Subjects”), immediately before the 26th day of April, 1975;
  - (b) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No.26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or
  - (c) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual’s father or husband or paternal grandfather or brother from the same father has been recorded in that register;
254. **“slump sale”** means the sale of any undertaking for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sale, other than the assignment of values to the assets or liabilities for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees;
255. **“society”** means a society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;
256. **“sold”** includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of business reorganisation, of any asset by the predecessor to the successor;

257. **“special modes of acquisition”** means,-
- (a) acquisition of converted property by a Hindu Undivided Family; and
  - (b) acquisition by any person in any of the following manners,-
    - (i) upon distribution of any asset on the total or partial partition of a Hindu undivided family;
    - (ii) by way of a gift;
    - (iii) under a will;
    - (iv) by way of succession, inheritance or devolution;
    - (v) upon distribution of any asset on the dissolution of an unincorporated body;
    - (vi) upon distribution of any asset on the liquidation of a company;
    - (vii) upon a revocable or an irrevocable settlement to a trust; and
    - (viii) under a transaction referred to in clause (c) to clause (f) of sub-section (1) of section 45;
258. **“special source”**, in all its grammatical variation, shall have the meaning assigned to it in section 13.
259. **“specified association”** means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and notified as such by the Central Government;
260. **“specified knowledge-based industry or service”** means-
- (a) information technology software;
  - (b) information technology service;
  - (c) entertainment service;
  - (d) pharmaceutical industry;
  - (e) bio-technology industry; and
  - (f) any other industry or service, as may be specified by the Central Government, by notification in the Official Gazette;
261. **“specified territory”** means any area outside India and notified as such by the Central Government.
262. **“speculative transaction”** means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips other than the following transactions:
- (a) a permitted derivative transaction;
  - (b) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him;
  - (c) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; and
  - (d) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;
263. **“speed boat”** means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour

in still water and so designed that when running at such speed, it will plane, i.e., its bow will rise;

264. **“stamp duty value”** means,-
- (a) the value adopted, or assessed, by any authority of the Central Government or a State Government for the purposes of payment of stamp duty in respect of an immovable property; or
  - (b) the value which the stamp valuation authority would have, regardless of anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of payment of stamp duty;
265. **“State Bank of India”** means the State Bank of India constituted under the State Bank of India Act, 1955;
266. **“State financial corporation”** means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951;
267. **“State industrial investment corporation”** means a Government company within the meaning of section 617 of the Companies Act, 1956, engaged in the business of providing long-term finance for industrial projects;
268. **“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;
269. **“stop filer”** in relation to a financial year means a person who has not furnished a return for the financial year but has,-
- (a) furnished a return for the immediately preceding financial year; or
  - (b) been assessed for the immediately preceding financial year ; or
  - (c) not furnished a return in response to a notice served under section 151 for the immediately preceding financial year;
270. **“subsidiary”** shall have the meaning assigned to it in section 4 of the Companies Act, 1956 and includes subsidiary incorporated outside India;
271. **“successor”** in relation to a business reorganisation means -
- (a) the amalgamated company or amalgamated cooperative, in the case of amalgamation;
  - (b) the merged company in the case of business reorganisation referred to in sub-clause (b) of clause (45).
  - (c) the resulting company, in the case of demerger;
272. **“successor in business”** means,-
- (a) a successor in relation to a business reorganisation;
  - (b) a firm which succeeds another firm carrying on a business; and
  - (c) a person who succeeds any other person in a business;
273. **“sweat equity share”** means,-
- (a) any security underlying any employees stock option granted under any plan, or scheme, of the employer; or
  - (b) any security issued by a company to its employee or director, at a discount or for consideration other than cash;
274. **“tax”** means -
- (a) any tax chargeable under the provisions of this Code;

- (b) surcharge chargeable under the relevant Finance Act; or
  - (c) cess chargeable under the relevant Finance Act;
275. **“tax bases”** means-
- (a) income or total income, as the case may be, in relation to income-tax;
  - (b) net wealth in relation to wealth-tax;
  - (c) dividend distributed in relation to dividend distribution tax; and
  - (d) the income or total income, net wealth, or dividend distributed referred to in sub-clauses (a) to (c) of any other person in respect of which the assessee is assessable under this Code;
276. **“tax account number”** means a number allotted under this Code to a person who is liable to deduct tax at source or collect tax at source under sub-chapter-A or sub-chapter-B of Chapter XI;
277. **“tax arrear”** means any amount of tax, interest or any other sum, due from an assessee under this Code;
278. **“Tax Recovery Officer”** means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing,-
- (a) to exercise the powers of a Tax Recovery Officer; and
  - (b) to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Code and which may be prescribed;
279. **“Tea Board”** means the Tea Board established under section 4 of the Tea Act, 1953;
280. **“test of continuity of business”** - a successor shall satisfy the test of continuity of business, if he -
- (a) holds at least three-fourths of the book value of fixed assets of the predecessor acquired through business reorganisation, continuously for a minimum period of five financial years immediately succeeding the financial year in which the business reorganisation takes place;
  - (b) continues the business of the predecessor for a minimum period of five financial years immediately succeeding the financial year in which the business reorganisation takes place;and
  - (c) fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor or to ensure that the business reorganisation is for genuine business purpose.
281. **“threshold limit”** means the maximum amount which is not liable to income-tax.
282. **“tonnage income scheme”** means a scheme for computation of profits of business of operating qualifying ships under the provisions of the Tenth Schedule;
283. **“total income”** of a financial year means the total income computed under section 71 for that financial year;
284. **“total income from special sources”** of a financial year means the net result of the aggregation under sub-section (4) of section 59 for that financial year.
285. **“total turnover”** in relation to a business means the gross sum received or receivable by the assessee, directly or indirectly, in respect of his world-wide sale of goods or supply of services, as the case may be, of the business including any tax, duty, cess or fee (by whatever name called) collected or collectible in respect of the sale or supply;

286. **“trade debt”** means a debt,-
- (a) which has been taken into account in computing the income of the assessee in any financial year; or
  - (b) which is money lent in the ordinary course of banking or money lending which is carried on by the assessee;
287. **“transfer”**, in relation to a capital asset, includes -
- (a) the sale, exchange or relinquishment of the asset;
  - (b) the extinguishments of any rights in it;
  - (c) its compulsory acquisition under any law;
  - (d) its conversion into, or its treatment as stock-in-trade of a business;
  - (e) the buy-back of any shares or other specified securities by the issuer of such shares or securities;
  - (f) any contribution of the asset, whether by way of capital or otherwise, to a company or an unincorporated body, in which the transferor is, or becomes, a shareholder or participant, as the case may be;
  - (g) the distribution of the asset on account of dissolution of an unincorporated body;
  - (h) the distribution of the asset on account of liquidation or dissolution of a company;
  - (i) any agreement allowing the possession of an immovable property, to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882;
  - (j) any agreement which enables the enjoyment of the asset, being any immovable property, whether by way of becoming a participant in an unincorporated body or acquiring shares in a company or by way of any agreement, arrangement or in any other manner;
  - (k) the maturity or redemption of a zero coupon bond;
  - (l) slump sale;
  - (m) any damage to the insured asset or its destruction as a result of -
    - (i) flood, typhoon, hurricane, cyclone, earthquake or any other convulsion of nature;
    - (ii) riot or civil disturbance;
    - (iii) accidental fire or explosion; or
    - (iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war);
  - (n) transfer of securities by a person having beneficial interest in the securities held by a depository as registered owner;
  - (o) distribution of the asset to a participant in an unincorporated body on account of his retirement from the body; and
  - (p) any disposition, settlement, trust, covenant, agreement or arrangement.
288. **“Transfer Pricing Officer”** means an Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, authorised by the Board to perform all or any of the functions for determining the arm’s length price in respect of an international transaction and levy any penalty connected thereto, in respect of any person or class of persons;
289. **“transportation charge”** includes -
- (a) any amount paid (whether in or out of India) to the assessee, or to any person on his behalf, on account of the carriage of passengers, livestock, mail or goods shipped to, or from, any place in India;

- (b) any amount received or deemed to be received in India by or behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any place outside India;
  - (c) any amount paid or payable, directly or indirectly by way of demurrage charges or handling charges or any other amount of similar nature; or
  - (d) any amount paid or payable for charter, including an arrangement as slot charter, space charter or joint charter or similar arrangement, of ships, aircraft or any other mode of transport, along with crew;
290. **“trust”** shall have the meaning assigned to it in section 96;
291. **“unabsorbed current capital loss”** means the amount determined under sub-section (5) of section 47.
292. **“unabsorbed current loss from ordinary sources”** means the amount determined under sub-section (4) of section 58;
293. **“unabsorbed current loss from the special source”** means the amount determined under sub-section (3) of section 59;
294. **“unabsorbed preceeding year capital loss”** means the unabsorbed current capital loss, for the financial year immediately preceeding the relevant financial year;
295. **“unabsorbed preceeding year loss from ordinary sources”** means the unabsorbed current loss from ordinary sources, for the financial year immediately preceeding the relevant financial year;
296. **“unabsorbed preceeding year loss from the special source”** means the unabsorbed current loss from the special source, of the financial year immediately preceeding the relevant financial year;
297. **“undertaking”** in relation to demerger shall include -
- (a) any part of an undertaking,
  - (b) a unit or division of an undertaking,
  - (c) a business activity taken as a whole, or
  - (d) individual assets or liabilities or any combination thereof which constitutes a business activity;
298. **“unincorporated body”** means -
- (a) a firm;
  - (b) an association of persons; or
  - (c) a body of individuals;
299. **“unit”** means a unit of a mutual fund or UTI;
300. **“Unit Trust of India”** means the Unit Trust of India established under the Unit Trust of India Act, 1963;
301. **“university”** means a university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956;
302. **“urban area”** means -
- (a) an area within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the financial year; or



- (b) an area within such distance from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;
303. **“urband development authority”** means any authority constituted in India by, or under, any law enacted for the purpose of -  
 (a) dealing with and satisfying the need for housing accommodation; or  
 (b) planning, development or improvement of cities, towns and villages;
304. **“Valuation date”** in relation to wealth tax means the 31st day of March of the relevant financial year;
305. **“Valuation Officer”** means a persons appointed as a Valuation Officer by the Central Government and includes a Regional Valuation Officer, a District Valuation Officer and an Assistant Valuation Officer;
306. **“value of gross assets”** in relation to a company shall have the meaning assigned to it in section 97;
307. **“value of inventory of the business, as on the close of the financial year”** means the value of stock of finished goods, work-in progress, raw material, stores and spares or any other inventory remaining in stock, as on the close of the financial year and the value is computed in accordance with the method of accounting regularly employed by the assessee;
308. **“value of inventory of the business, as on the beginning of the financial year”** shall be,-  
 (a) nil if the business as commenced during the financial year; and  
 (b) the value of inventory of the business, as on the close of the immediately preceding financial year, in any other case;
309. **“value of sweat equity shares”** shall be the value of the sweat equity shares on the date on which the option is exercised by the assessee, determined in accordance with the method as may be prescribed, as reduced by the amount actually paid by, or recovered from, the assessee in respect of such shares;
310. **“venture capital company”** means such company-  
 (a) which has been granted a certificate of registration as a venture capital company under the Securities and Exchange Board of India Act, 1992; and  
 (b) which fulfils all other conditions as may be prescribed in this behalf;
311. **“venture capital fund”** means such fund-  
 (a) which has been granted a certificate of registration as a venture capital fund under the Securities and Exchange Board of India Act, 1992; and  
 (b) which fulfils all other conditions as may be prescribed in this behalf;
312. **“wealth-tax”** means wealth-tax leviable under Chapter VIII or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business carried on by the assessee, whether or not the debts of the business are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business;



313. **“widely held company”** means -
- (a) a company owned by the Government or the Reserve Bank of India;
  - (b) a company in which not less than forty per cent of the paid-up share capital is held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank;
  - (c) a company registered under section 25 of the Companies Act, 1956;
  - (d) a mutual benefit finance company;
  - (e) a co-operative sector company;
  - (f) a public company;
  - (g) a company in which not less than fifty per cent of the paid up equity share capital is held throughout the relevant financial year, by the companies (whether singly or taken together) to which this clause applies; or
  - (h) a company which is not a private company as defined in section 3 of the Companies Act, 1956 and the shares in such company, carrying not less than fifty per cent of the voting power, have been allotted and were throughout the relevant financial year held -
    - (i) by the companies referred to in clauses (a) to (g) (whether singly or taken together); or
    - (ii) by a subsidiary of a company referred to in clauses (a) to (g), if the whole of the paid-up share capital of such subsidiary company has been held by the parent company or by its nominees throughout the financial year;
314. **“working participant”** means an individual who is actively engaged in conducting the affairs of the business or profession of the unincorporated body of which he is a participant;
315. **“written down value”** shall have the same meaning assigned to it in section 43;
316. **“written off”** in relation to a debt means recording an appropriate entry in the account of the debtor so as to reduce the amount of the debt without any recovery thereof;
317. **“year”** means the financial year;
318. **“zero coupon bond”** means a bond-
- (a) issued by any company, fund or scheduled bank in accordance with a scheme notified by the Central Government in the Official Gazette;
  - (b) in respect of which no payment and benefit is received or receivable before maturity or redemption from the company, fund or scheduled bank; and
  - (c) which the Central Government may, by notification in the Official Gazette, specify in this behalf.

### Interpretation

- 285 . In this Code, unless otherwise stated,-
- (a) a reference to any income, or to the result of any computation, shall be construed as a reference to both the negative and positive variation of the income or the result, as the case may be;
  - (b) any direction for aggregation of two or more items, which are expressed as amounts, shall be construed also to include a direction for aggregation of negative and positive amounts in all their combinations;
  - (c) the value of any variable in a formula shall be deemed to be nil, if the value of such variable is indeterminable or unascertainable.

**THE FIRST SCHEDULE**  
**RATES OF INCOME-TAX**

(See section 3)

- (1) The liability to income tax, of any person, in respect of his total income for the financial year, which does not include income from any special source, shall be the amount of income tax calculated at the rate specified, and in the manner provided, in the following Paragraph A to Paragraph F:-

**Paragraph A**

- (I) In the case of every individual, other than the individual referred to in items (II) and (III) of this Paragraph, or Hindu undivided family, not being a case to which any other Paragraph of this Part applies, -

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs.1,60,000                           | <i>Nil</i> ;   |
| (2) where the total income exceeds Rs.1,60,000 but does not exceed Rs.10,00,000  | <b>10 per cent</b> of the amount by which the total income exceeds Rs.1,60,000;                          |
| (3) where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000 | Rs.84,000 <i>plus</i> <b>20 per cent</b> of the amount by which the total income exceeds Rs. 10,00,000;  |
| (4) where the total income exceeds Rs.25,00,000                                  | Rs.3,84,000 <i>plus</i> <b>30 per cent</b> of the amount by which the total income exceeds Rs.25,00,000; |

- (II) In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the financial year,—

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs. 1,90,000                          | <i>Nil</i> ;   |
| (2) where the total income exceeds Rs.1,90,000 but does not exceed Rs.10,00,000  | <b>10 per cent</b> of the amount by which the total income exceeds Rs.1,90,000;                          |
| (3) where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000 | Rs.81,000 <i>plus</i> <b>20 per cent</b> of the amount by which the total income exceeds Rs.10,00,000;   |
| (4) where the total income exceeds Rs.25,00,000                                  | Rs.3,81,000 <i>plus</i> <b>30 per cent</b> of the amount by which the total income exceeds Rs.25,00,000; |

(III) In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the financial year,—

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs.2,40,000                           | Nil;   |
| (2) where the total income exceeds Rs.2,40,000 but does not exceed Rs.10,00,000  | 10 per cent of the amount by which the total income exceeds Rs.2,40,000;                   |
| (3) where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000 | Rs.76,000 plus 20 per cent of the amount by which the total income exceeds Rs.10,00,000;   |
| (4) where the total income exceeds Rs.25,00,000                                  | Rs.3,76,000 plus 30 per cent of the amount by which the total income exceeds Rs.25,00,000; |

**Paragraph B**

(I) In the case of every co-operative society,-

*Rates of income-tax*

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs.10,000                       | 10 per cent of the total income;   |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs.20,000 | Rs.1,000 plus 20 per cent of the amount by which the total income exceeds Rs.10,000; |
| (3) where the total income exceeds Rs.20,000                               | Rs.3,000 plus 30 per cent of the amount by which the total income exceeds Rs.20,000; |

(II) In the case of every other society,-

*Rate of income-tax*

On the whole of the total income 30 per cent

**Paragraph C**

In the case of every non-profit organisation,-

*Rate of income-tax*

On the whole of the total income 15 per cent

**Paragraph D**

In the case of every unincorporated body,-

*Rate of income-tax*

On the whole of the total income            30 per cent

**Paragraph E**

In the case of every local authority,-

*Rate of income-tax*

On the whole of the total income            30 per cent

**Paragraph F**

In the case of a company,-

*Rates of income-tax*

On the whole of the total income            25 per cent of the total income;

- (2) In the cases to which Paragraph A of rule 1 applies, where the assessee has, in the financial year, any net agricultural income exceeding five thousand rupees, in addition to total income from ordinary sources and the total income exceeds the threshold limit, then,-
- (a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the threshold limit but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and
  - (b) the income-tax chargeable shall be calculated as follows:-
    - (i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;
    - (ii) the net agricultural income shall be increased by the amount of threshold limit, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;
    - (iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income.
- (3) However, if the total income of a person specified in column 2 of the Table below includes income from any special source specified in the corresponding entry in



**THE SECOND SCHEDULE  
RATES OF OTHER TAXES**

**A. Tax on gross assets**

1. The amount referred to in clause (b) of sub-section (3) of section 3 shall be calculated at the rate specified, and in the manner provided, here under.

*Rate of tax*

- (a) On the value of the gross assets, as on the close of the financial year, of a banking company. 0.25 per cent.
- (b) On the value of the gross assets, as on the close of the financial year, of any other company. 2 per cent.

**B. Tax on dividends distributed**

2. The amount referred to in sub-section (1) of section 99 shall be calculated at the rate specified, and in the manner provided, here under.

*Rate of tax*

On the amount of dividends, whether interim or otherwise, declared by a domestic company 15 per cent.

**C. Tax on branch profits**

3. The amount referred to in sub-section (1) of section 100 shall be calculated at the rate specified, and in the manner provided, here under.

*Rate of tax*

On the branch profits 15 per cent.

**D. Tax on net wealth**

4. The amount referred to in sub-section (1) of section 101 shall be calculated at the rate specified, and in the manner provided, here under.

*Rate of tax*

- (1) where the net wealth, as on the valuation date, does not exceed rupees fifty crores Nil
- (2) where the net wealth, as on the valuation date, exceeds rupees fifty crores 0.25 per cent of the amount by which the net wealth exceeds rupees fifty crores

**THE THIRD SCHEDULE**

**RATES FOR DEDUCTION OF TAX AT SOURCE**

**(Rates for deduction of tax at source in the case of resident deductee)**

<b>S. No.</b>	<b>Nature of Payment</b>	<b>Rate</b>
1.	Salary paid to employees	The average rate of income tax on salary paid during the financial year, computed on the basis of the rates specified in rule 1 of the First Schedule
2.	Payment in respect of - (a) works contract; (b) service contract; (c) broadcasting and telecasting; or (d) supply of labour for carrying out any works, or service, contract.	One per cent.
3.	Payment in respect of advertising	One per cent.
4.	Payment in respect of carriage of goods and passengers by any mode of transport other than by railways.	One per cent.
5.	Interest	Ten per cent.
6.	Dividend other than dividend in respect of which dividend distribution tax is payable.	Ten per cent.
7.	Commission, brokerage, remuneration, or prize, (by whatever name called) for rendering any services.	Ten per cent.
8.	Fees for professional or technical services	Ten per cent.
9.	Payment for royalty or non-compete fee	Ten per cent.
10.	Payment of compensation on compulsory acquisition of immovable property, other than agricultural land	Ten per cent.
11.	Rent	
	(i) For the use of machinery or plant or equipment	(i) One per cent
	(ii) For use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.	(ii) Ten per cent.
12.	Winning from any lottery or crossword puzzle or card game or other game of any sort	Thirty per cent.
13.	Winnings from any horse race	Thirty per cent.
14.	Any other income	Ten per cent.

*Explanation* : For the purposes of this Schedule,-

- (a) 'contract' and 'contractor' include 'sub-contract' and 'sub-contractor' respectively;
- (b) 'broadcasting and telecasting' includes production of programmes for broadcasting; and
- (c) 'service contract' includes a contract for job work.

**THE FOURTH SCHEDULE****(Rates for deduction of tax at source in the case of non-resident deductee)**

<b>S. No.</b>	<b>Nature of Payment</b>	<b>Rate</b>
1.	Investment income by way of -	
	(i) interest	Twenty per cent.
	(ii) dividends on which distribution tax has not been paid	Twenty per cent.
	(iii) capital gains	Thirty per cent.
	(iv) any other investment income	Twenty per cent.
2.	On income by way of royalty or fees for technical services.	Twenty per cent.
3.	On income of a non-resident sportsman (not being a citizen of India) by way of-	Ten per cent
	(i) participation in India in any game (other than a game the winnings wherefrom are taxable under sub-item (b) of item 4 of rule 3 of the First Schedule) or sports;	
	(ii) advertisement; or	
	(iii) contribution of articles relating to any game or sport in newspapers, magazines or journals in India.	
4.	On income by way of winnings from lotteries, crossword puzzles, card games or any other game or gambling or betting.	Thirty per cent.
5.	On income by way of winnings from horse races (not being the income from the activity of owning and maintaining race horses)	Thirty per cent.
6.	On the whole of other income	Thirty five per cent.



**THE FIFTH SCHEDULE  
PROCEDURE FOR RECOVERY OF TAX**

**PART I  
GENERAL PROVISIONS**

**Definitions.**

1. In this Schedule, unless the context otherwise requires,-
  - (a) “**certificate**”, except in rules 7, 44, 65 and sub-rule (2) of rule 66, in respect of any assessee means the certificate referred to in sub-section (1) of section 221;
  - (b) “**defaulter**” means the assessee mentioned in the certificate;
  - (c) “**execution**”, in relation to a certificate, means recovery of arrears in pursuance of the certificate;
  - (d) “**movable property**” includes growing crops;
  - (e) “**officer**” means a person authorised to make an attachment, or sale, under this Schedule;
  - (f) “**rule**” means a rule contained in this Schedule; and
  - (g) “**share in a corporation**” includes stock, debenture-stock, debentures or bonds.

**Issue of notice.**

2. (1) The Tax Recovery Officer shall, upon assumption of jurisdiction under sub-section (8) of section 220, cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice.
  - (2) The notice under sub-rule (1) shall also intimate to the defaulter that steps would be taken to realize the amount under this Schedule, if he defaults to make payment within the time specified therein.

**When certificate may be executed.**

3. (1) No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule.
  - (2) However, the Tax Recovery Officer may attach the whole, or any part, of the movable property of the defaulter, as would be liable to attachment in execution of a decree of a civil court, within the said period of fifteen days if,-
    - (a) he is satisfied, for reasons to be recorded in writing, that the defaulter is likely to conceal, remove or dispose of the whole, or any part, of the movable property; and
    - (b) the realization of the amount of the certificate would in consequence be delayed or obstructed.
  - (3) The defaulter whose property has been so attached may furnish security to the satisfaction of the Tax Recovery Officer and on such acceptance of the security by the Tax Recovery Officer, the attachment shall be cancelled from the date on which the security is accepted.

**Mode of recovery.**

4. (1) If the amount mentioned in the notice is not paid within the time specified therein, or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one, or more, of the following modes :-
  - (a) by attachment and sale of the defaulter’s movable property;
  - (b) by attachment and sale of the defaulter’s immovable property;

- (c) by arrest of the defaulter and his detention in prison;
  - (d) by appointing a receiver for the management of the defaulter's movable and immovable properties.
- (2) The defaulter's movable or immovable property, referred to in sub-rule (1), shall include any property transferred directly, or indirectly, otherwise than for adequate consideration by the defaulter to -
- (a) his spouse; or
  - (b) minor child.
- (3) However, in respect of any arrears due from the defaulter for the period prior to date of attainment of majority by the minor child, the property shall continue to be included in the defaulter's movable or immovable property even after the date.

**Interest, costs and charges recoverable.**

5. There shall be recoverable, in the proceedings in execution of every certificate,-
- (a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with section 216, and
  - (b) all charges incurred in respect of-
    - (i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and
    - (ii) all other proceedings taken for realising the arrears.

**Purchaser's title.**

6. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.
- (2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

**Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.**

7. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.
- (2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

**Disposal of proceeds of execution.**

8. (1) Whenever assets are realised by sale, or otherwise, in execution of a certificate, the proceeds shall be disposed of in the following manner, namely :-
- (a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;
  - (b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

- (c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.
- (2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.

**General bar to jurisdiction of civil courts, save where fraud alleged.**

- 9. (1) Except as otherwise expressly provided in this Act, every question arising between the Tax Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises :
- (2) However, a suit may be brought in a civil court in respect of any question referred to in sub-rule (1) upon the ground of fraud.

**Property exempt from attachment.**

- 10. (1) Any property exempted, under Code of Civil Procedure, 1908, from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.
- (2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive

**Investigation by Tax Recovery Officer.**

- 11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection.
- (2) However, no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.
- (3) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer, ordering the sale, may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.
- (4) The claimant, or objector, must adduce evidence to show that he had some interest in, or was possessed of, the property in question-
  - (a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or
  - (b) (in the case of movable property) at the date of the attachment.
- (5) The Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale if, upon the said investigation, he is satisfied that, for the reason stated in the claim or objection, such property-
  - (a) was not, at the said date, in the possession of the defaulter or of some person in trust for him;
  - (b) was not in the occupancy of a tenant or other person paying rent to the defaulter; or
  - (c) being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, .
- (6) The Tax Recovery Officer shall disallow the claim, if, for reasons to be recorded in writing, he is satisfied that the property was-

- (a) at the said date, in the possession of the defaulter as his own property and not on account of any other person;
  - (b) in the possession of some other person in trust for the defaulter, or
  - (c) in the occupancy of a tenant or other person paying rent to the defaulter.
- (7) Where a claim, or an objection, is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

**Removal of attachment on satisfaction, or cancellation, of certificate.**

12. Where-
- (a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or
  - (b) the certificate is cancelled, the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

**Officer entitled to attach and sell.**

13. The attachment and sale of movable and immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct.

**Defaulting purchaser answerable for loss on resale.**

14. (1) Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the Tax Recovery Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule.
- (2) However, such application shall not be entertained, if it is filed after the end of fifteenth day from the date of resale.

**Adjournment or stoppage of sale.**

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment :
- (2) However, if the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.
- (3) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.
- (4) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

**Private alienation to be void in certain cases.**

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter, or his representative in interest, shall not be competent to mortgage, charge, lease or

otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

- (2) Where an attachment has been made under this Schedule, any private transfer, or delivery, of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

**Prohibition against bidding or purchase by officer.**

17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

**Prohibition against sale on holidays.**

18. No sale under this Schedule shall take place on -
- (a) a Sunday;
  - (b) other general holiday recognised by the State Government; or
  - (c) any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

**Assistance by police.**

19. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

**Entrustment of certain functions by Tax Recovery Officer.**

20. A Tax Recovery Officer may, with the previous approval of the Joint Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.

**PART II**  
**ATTACHMENT AND SALE OF MOVABLE PROPERTY**  
**ATTACHMENT**

**Warrant.**

21. Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realized.

**Service of copy of warrant.**

22. The officer shall cause a copy of the warrant to be served on the defaulter.

**Attachment.**

23. If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

**Property in defaulter's possession.**

24. (1) Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:
- (2) The officer referred in sub-rule (1) may sell the property seized at once, if-
- (a) the property seized is subject to speedy and natural decay; or
  - (b) the expense of keeping the seized property in custody is likely to exceed its value.

**Agricultural produce.**

25. (1) Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment-
- (a) where such produce is growing crop,-on the land on which such crop has grown; or
  - (b) where such produce has been cut or gathered,-on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited;
- (2) A copy of warrant of attachment, where the property to be attached is agricultural produce, shall also affixed on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he-
- (a) carries on business or personally works for gain; or
  - (b) is known to have last resided or carried on business or personally worked for gain.
- (3) Upon affixing the copy of warrant, under sub-rules (1) and (2), the produce shall be deemed to have passed into the possession of the Tax Recovery Officer.

**Provisions as to agricultural produce under attachment.**

26. (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and he shall have power to defray the cost of such arrangements.
- (2) The defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order.
- (3) If the defaulter fails to do all or any of the act referred to in sub-rule (2), any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.
- (4) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.
- (5) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.
- (6) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

**Debts and shares, etc.**

27. (1) In the case of a debt not secured by a negotiable instrument, a share in a corporation or other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting,-
- (a) in the case of the debt-the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;
  - (b) in the case of the share-the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
  - (c) in the case of the other movable property (except as aforesaid)-the person in possession of the same from giving it over to the defaulter.
- (2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.
- (3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

**Attachment of decree.**

28. (1) The attachment of a decree of a civil court for the payment of money, or for sale in enforcement of a mortgage or charge, shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until-
- (a) the Tax Recovery Officer cancels the notice; or
  - (b) the Tax Recovery Officer, or the defaulter, applies to the court receiving such notice to execute the decree.
- (2) Where a civil court receives an application under clause (b) of sub-rule (1), it shall, on the application of the Tax Recovery Officer, or the defaulter, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.
- (3) The Tax Recovery Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

**Share in movable property.**

29. Where the property to be attached consists of the share, or interest, of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

**Salary of Government servants.**

30. Attachment of the salary, or allowances, of servants of the Government, or a local authority, may be made in the manner provided by rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908, and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

**Attachment of negotiable instrument.**

31. Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.



**Attachment of property in custody of court or public officer.**

32. (1) Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued.
- (2) Where the property is in the custody of a court, any question of title or priority arising between the Tax Recovery Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by the court.

**Attachment of partnership property.**

33. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate.
- (2) The Tax Recovery Officer may, by the order referred to in sub-rule(1) or any subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.
- (3) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

**Inventory.**

34. In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

**Attachment not to be excessive.**

35. The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

**Seizure between sunrise and sunset.**

36. Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

**Power to break open doors, etc.**

37. (1) The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property, if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given.
- (2) However, before breaking open, the officer shall give all reasonable opportunity to women to withdraw.

**Sale**

38. The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.



**Issue of proclamation.**

39. When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

**Proclamation how made.**

40. (1) Such proclamation shall be made by beat of drum or other customary mode,-
- (a) in the case of property attached by actual seizure-
    - (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
    - (ii) at such other places as the Tax Recovery Officer may direct;
  - (b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.
- (2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

**Sale after fifteen days.**

41. Except where the property is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.

**Sale of agricultural produce.**

42. (1) Where the property to be sold is agricultural produce, the sale shall be held,-
- (a) if such produce is a growing crop-on or near the land on which such crop has grown, or
  - (b) if such produce has been cut or gathered-at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited.
- (2) However, the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.
- (3) The sale shall be postponed, where, on the produce being put up for sale,-
- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
  - (b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day.
- (4) When the sale has been postpone under sub-rule (3), it shall be then completed on the date postponed regardless of any price offered for the produce.

**Special provisions relating to growing crops.**

43. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut, or gathered, and is ready for storing.
- (2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g., as green wheat), it may be sold before it

is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

**Sale to be by auction.**

44. The property shall be sold by public auction in one, or more, lots as the officer may consider advisable, and if the amount to be realized by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

**Sale by public auction.**

45. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.
- (2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.
- (3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

**Irregularity not to vitiate sale, but any person injured may sue.**

46. No irregularity in publishing, or conducting, the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

**Negotiable instruments and shares in a corporation.**

47. The Tax Recovery Officer may, regardless of anything to the contrary contained in this Schedule, authorise the sale of any property, which is a negotiable instrument or a share in a corporation, through a broker instead of directing the sale to be made by public auction.

**Order for payment of coin or currency notes to the Assessing Officer.**

48. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8.

**PART III**

**ATTACHMENT AND SALE OF IMMOVABLE PROPERTY**

*ATTACHMENT*

**Attachment.**

49. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring, or charging, the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

**Service of notice of attachment.**

50. A copy of the order of attachment shall be served on the defaulter.

**Proclamation of attachment.**

51. The order of attachment shall be proclaimed at some place on, or adjacent to, the property attached by beat of drum, or other customary mode, and a copy of the

order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

**Attachment to relate back from the date of service of notice.**

52. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

**SALE**

**Sale and proclamation of sale**

53. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.
- (2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

**Contents of proclamation**

54. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,-
- (a) the property to be sold;
  - (b) the revenue, if any, assessed upon the property or any part thereof;
  - (c) the amount for the recovery of which the sale is ordered;
  - (d) the reserve price, if any, below which the property may not be sold; and
  - (e) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

**Mode of making proclamation.**

55. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.
- (2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.
- (3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

**Time of sale**

56. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

**Sale to be by auction**

57. (1) The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.
- (2) However, no sale under this rule shall be made, if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (d) of rule 54.

**Deposit by purchaser and resale in default.**

58. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the

amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

- (2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

**Procedure in default of payment.**

59. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

**Authority to bid.**

60. (1) Where the sale of a property, for which a reserve price has been specified under clause (d) of rule 54, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Assessing Officer, if so authorised by the Chief Commissioner or Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale.
- (2) All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals.
- (3) The bid shall be rejected if the person bidding on behalf of his principle fails to deposit the authority.
- (4) Where the Assessing Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 58 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.

**Application to set aside sale of immovable property on deposit.**

61. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing-
  - (a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one and one-fourth per cent for every month or part of a month, calculated from the date of the proclamation of sale to the date when the deposit is made; and
  - (b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.
- (2) Where a person makes an application under rule 62 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

**Application to set aside sale of immovable property on ground of non-service of notice or irregularity.**

62. (1) Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground-
  - (a) that notice was not served on the defaulter to pay the arrears as required by this Schedule; or

(b) of a material irregularity in publishing, or conducting, the sale.

- (2) No sale shall be set aside on any ground referred to in sub-rule (1) unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity.
- (3) An application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

**Setting aside sale where defaulter has no saleable interest.**

63. At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

**Confirmation of sale.**

64. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.
- (2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale.
- (3) No order under sub-rule (2) shall be made unless notice of the application has been given to the persons affected thereby.

**Return of purchase money in certain cases.**

65. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

**Sale certificate.**

66. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.
- (2) Such certificate shall state the date on which the sale became absolute.

**Postponement of sale to enable defaulter to raise amount due under certificate.**

67. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.
- (2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and regardless anything contained in this Schedule, to make the proposed mortgage, lease or sale.
- (3) All moneys payable under the mortgage, lease or sale referred to in sub-rule (2) shall be paid to the Tax Recovery Officer and not to the defaulter.
- (4) No mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

**Fresh proclamation before re-sale.**

68. Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

**Bid of co-sharer to have preference.**

69. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

**Acceptance of property in satisfaction of amount due from the defaulter.**

70. (1) Without prejudice to the provisions contained in this Part, an Assessing Officer, duly authorised by the Chief Commissioner or Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 60, at such price as may be agreed upon between the Assessing Officer and the defaulter.
- (2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Assessing Officer and on the date the possession of the property is delivered to the Assessing Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908, accordingly.
- (3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the Assessing Officer to the defaulter within a period of three months from the date of delivery of possession of the property.
- (4) Where the Assessing Officer fails to pay the excess amount referred to in sub-rule (3) within the period referred therein, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at one-half per cent for every month or part of a month to the defaulter on such amount.

**Time limit for sale of attached immovable property.**

71. (1) No sale of immovable property shall be made under this Part after the expiry of four years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become final in terms of the provision of sub-chapter D of Chapter X.
- (2) The period of limitation referred to in sub-rule (1) shall stand extended by one year, if the immovable property is required to be re-sold-
- due to the amount of highest bid being less than the reserve price;
  - under the circumstances mentioned in rule 58 or rule 59; or
  - due to the sale being set aside under rule 62.
- (3) In computing the period of limitation under sub-rule (1), the following period shall be excluded:-
- the period during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court;
  - the period during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or
  - the period commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided.

- (4) Where immediately after the exclusion of the period referred in sub-rule (3), the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.
- (5) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.

#### **PART IV APPOINTMENT OF RECEIVER**

##### **Appointment of receiver for business.**

72. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.
- (2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

##### **Appointment of receiver for immovable property.**

73. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

##### **Powers of receiver.**

74. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.
- (2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

##### **Withdrawal of management**

75. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

#### **PART V ARREST AND DETENTION OF THE DEFAULTER**

##### **Notice to show cause**

76. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison.
- (2) The provisions of sub-rule (1) shall not apply if the Tax Recovery Officer, for reasons recorded in writing, is satisfied-
  - (a) that the defaulter has, with the object or effect of obstructing the execution of the certificate, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property; or



- (b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.
- (3) A warrant for the arrest of the defaulter may, regardless of anything contained in sub-rule (1), be issued by the Tax Recovery Officer, if he is satisfied, by affidavit or otherwise, that the defaulter is likely to abscond, or leave the local limits of the jurisdiction of the Tax Recovery Officer, with the object, or effect, of delaying the execution of the certificate.
- (4) The Tax Recovery Officer may issue a warrant for the arrest of the defaulter if appearance is not made in obedience to a notice issued and served under sub-rule (1).
- (5) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (3) or sub-rule (4) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.
- (6) Every person arrested in pursuance of a warrant of arrest under this rule shall be brought before the Tax Recovery Officer issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey).
- (7) The Tax Recovery Officer shall at once release the defaulter if he pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him.
- (8) For the purposes of this rule, the karta of a Hindu undivided family shall be deemed to be the defaulter if the defaulter is the Hindu undivided family.

#### **Hearing.**

77. The Tax Recovery Officer shall give the defaulter an opportunity of showing cause why he should not be committed to the civil prison, when the defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73.

#### **Custody pending hearing.**

78. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

#### **Order of detention.**

79. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest.
- (2) The Tax Recovery Officer may, before making the order of detention, give the defaulter an opportunity of satisfying the arrears by-
- (a) leaving the defaulter in the custody of the officer arresting him, or of any other officer, for a specified period not exceeding 15 days; or
  - (b) releasing him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.
- (3) The Tax Recovery Officer shall direct the release of the defaulter, who is under arrest, if he does not make an order of detention under sub-rule (1).

#### **Detention in and release from prison.**

80. (1) Every person detained in the civil prison in execution of a certificate may be so detained,-



- (a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees-for a period of six months;and
- (b) in any other case-for a period of six weeks.
- (2) However, he shall be released from such detention-
  - (a) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or
  - (b) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.
- (3) A defaulter released from detention under this rule shall not,-
  - (a) be discharged from his liability for the arrears merely by reason of his release; and
  - (b) be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

### **Release**

- 81. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that-
  - (a) he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer; and
  - (b) he has not committed any act of bad faith.
- (2) The Tax Recovery Officer may order the rearrest of the defaulter in execution of the certificate, if he has ground for believing the disclosure made by the defaulter under sub-rule (1) to have been untrue.
- (3) However, the period of the detention of the defaulter in the civil prison shall not in the aggregate exceed that authorised by rule 77.

### **Release on ground of illness.**

- 82. (1) The Tax Recovery Officer may, at any time after a warrant for the arrest of a defaulter has been issued, cancel the warrant on the ground of serious illness of the defaulter.
- (2) The Tax Recovery Officer may, in a case where a defaulter has been arrested, release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.
- (3) A defaulter, who has been committed to the civil prison, may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.
- (4) A defaulter released under this rule may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

### **Entry into dwelling house.**

- 83. For the purpose of making an arrest under this Schedule-
  - (a) no dwelling house shall be entered after sunset and before sunrise;
  - (b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;
  - (c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

**Prohibition against arrest of women or minors, etc.**

84. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of-
- (a) a woman; or
  - (b) any person who, in his opinion, is a minor or of unsound mind.

**PART VI  
MISCELLANEOUS**

**Officers deemed to be acting judicially.**

85. Every Chief Commissioner, Commissioner, Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850.

**Power to take evidence.**

86. Every Chief Commissioner, Commissioner, Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

**Continuance of certificate.**

87. No certificate shall cease to be in force by reason of the death of the defaulter.

**Procedure on death of defaulter.**

88. The proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter, if the defaulter dies, at any time, after the certificate is drawn up by the Tax Recovery Officer.

**Appeals.**

89. (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner.
- (2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.
- (3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.
- (4) Where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, regardless of anything contained in sub-rule (1), all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.

**Review.**

90. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Chief Commissioner, Commissioner, Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

**Recovery from surety.**

91. A person may be proceeded against under this Schedule, if he has become surety for the amount due by a defaulter, as if the person were the defaulter.

**Subsistence allowance.**

92. (1) The sum payable for the subsistence of a defaulter, who is arrested or detained in the civil prison, from the time of arrest until he is released shall be borne by the Tax Recovery Officer.
- (2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.
- (3) Sums payable under this rule shall be deemed to be costs in the proceeding.
- (4) However, the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

**Forms.**

93. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

**Power to make rules.**

94. (1) The Board may make rules, consistent with the provisions of this Act, for regulating the procedure to be followed by Chief Commissioners, Commissioners, Tax Recovery Officers and other officers acting under this Schedule.
- (2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all, or any of, the following matters, namely:-
  - (a) the area within which Chief Commissioners, Commissioners or Tax Recovery Officers may exercise jurisdiction;
  - (b) the manner in which any property sold under this Schedule may be delivered;
  - (c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution, or endorsement, is required to transfer such negotiable instrument, or share, to a person who has purchased it under a sale under this Schedule;
  - (d) the procedure for dealing with resistance, or obstruction, offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;
  - (e) the fees to be charged for any process issued under this Schedule;
  - (f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;
  - (g) recovery of poundage fee;
  - (h) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;
  - (i) the mode of attachment of business.

**Saving regarding charge.**

95. Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

**THE SIXTH SCHEDULE**

S.No. (1)	Income not included in the total income (2)
1.	Agricultural income.
2.	Any sum received by an individual as a member of a Hindu undivided family if,- (a) the sum has been paid out of the income of the family, or (b) in the case of any impartible estate, the sum has been paid out of the income of the impartible estate belonging to the family.
3.	Any sum received by a person, being a participant in an unincorporated body, towards his share as per the agreement of association, in the total income of the unincorporated body which is separately assessed.
4.	The amount of family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, if the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed.
5.	Any income arising to a foreign company, as the Central Government may, by notification in the Official Gazette, specify in this behalf, by way of royalty or fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India.
6.	Income of the European Economic Community derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf.
7.	Any amount of interest - (a) on deposits with any scheduled bank, made with the approval of the Reserve Bank of India, by a bank incorporated in a country outside India and authorised to perform central banking functions in that country; (b) on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949; (c) on a loan advanced by the Nordic Investment Bank to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that Bank on the 25th day of November, 1986; or (d) on a loan granted by European Investment Bank in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank.
8.	Income accruing or arising to a person, if - (a) the person is a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution ; (b) the person resides in - (i) the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura, or (ii) any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, or

- (iii) the areas covered by notification No. TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of Paragraph 20 of the sixth schedule of the Constitution as it stood immediately before the commencement of the North-Eastern Areas (Reorganisation) Act, 1971, or
  - (iv) the Ladakh region of the State of Jammu and Kashmir; and
  - (c) the income is in the nature of dividend or interest on securities or from any source in the areas or States specified in sub-clause (b).
9. Income accruing or arising to a Sikkimese, other than a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese,-
    - (a) from any source in the State of Sikkim; or
    - (b) by way of dividend or interest on securities.
  10. Such income and amount thereof, as notified by the Central Government in this behalf, arising to a body or authority, if-
    - (a) it has been established or constituted or appointed under -
      - (i) a treaty or an agreement entered into by the Central Government with two or more countries; or
      - (ii) a convention signed by the Central Government;
    - (b) it is not established or constituted or appointed for the purposes of profit; and
    - (c) it is notified by the Central Government in the Official Gazette for the purposes of this clause.
  11. The amount of accumulated balance, as on the 31st day of March, 2011, in the account of an employee participating in an approved provident fund and any accretion thereto.
  12. The amount of remuneration received by an individual who is not a citizen of India, if the following conditions are fulfilled:-
    - (a) such individual is an official, by whatever name called, of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity;
    - (b) the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country; and
    - (c) the members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff.
  13. The amount received by an individual who is not a citizen of India by way of remuneration as an employee of a foreign enterprise for services rendered by him during his stay in India, if the following conditions are fulfilled-
    - (a) the foreign enterprise is not engaged in any trade or business in India;
    - (b) his stay in India does not exceed in the aggregate a period of ninety days in such financial year; and
    - (c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Code.
  14. The amount received by, or due to, any individual being a non-resident, who is not a citizen of India, by way of remuneration, if the following conditions are fulfilled:
    - (a) such remuneration is for services rendered in connection with the employment on a foreign ship; and

- (b) his total stay in India does not exceed in the aggregate a period of ninety days in the financial year.
15. The amount of remuneration received by an individual who is not a citizen of India, if the following conditions are fulfilled:-
    - (a) he is an employee of the Government of a foreign State during his stay in India; and
    - (b) his stay in India is in connection with his training in any establishment or office of, or in any undertaking owned by,-
      - (i) the Government; or
      - (ii) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments; or
      - (iii) any company which is a subsidiary of a company referred to in item (b); or
      - (iv) any corporation established by or under a Central, State or Provincial Act; or
      - (v) any society registered under the Societies Registration Act, 1860 (14 of 1860), or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments.
  16. Any amount received by an assessee under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (21 of 1985) in excess of the amount, if any, allowed as a deduction in any financial year on account of any loss or damage caused to him by such disaster.
  17. Any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette, of accumulated balance, as on the 31st day of March, 2011, in the account of the person.
  18. Interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.
  19. Interest on bonds-
    - (a) issued by a local authority; and
    - (b) specified by the Central Government by notification in the Official Gazette;
  20. Any income received in respect of,-
    - (a) the units of a Mutual Fund;
    - (b) units from the Administrator of the specified undertaking; or
    - (c) units from the specified company.
  21. Any dividends in respect of which dividend distribution tax has been paid under section 99;
  22. Any income of a political party which is computed under the heads "Income from house property" or "Capital gains" or "Income from residuary sources" or any income by way of voluntary contributions received by it from any person, if,-
    - (a) the political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;
    - (b) the political party keeps and maintains a record of voluntary contribution in excess of twenty thousand rupees, alongwith the name and address of the contributors;

- (c) the accounts of such political party are audited by an accountant; and
  - (d) the treasurer of such political party or any other person authorised by that political party in this behalf submits a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 for the financial year.
23. The amount of interest on deposits in a Non-Resident (External) Account in any bank in India, if the assessee is an individual and -
- (a) is resident outside India as defined in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973; or
  - (b) has been permitted by the Reserve Bank of India to maintain the aforesaid
24. The amount of interest payable by a scheduled bank to a non-resident or to a person who is not ordinarily resident, on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India.
25. Amount received by way of-
- (a) daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;
  - (b) any allowance received by any person by reason of his membership of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986;
  - (c) any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature.
26. Any amount received, whether in cash or in kind,-
- (a) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or
  - (b) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest.
27. The amount of family pension received by any member of the family of an individual who had been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf.
28. Any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.
29. Any income of an individual, if-
- (a) the income,-
    - (i) accrues to him outside India; or
    - (ii) is received outside India, in the year, by or on behalf of such individual;
  - (b) the income is not derived from a business controlled, or a profession set up, in India;
  - (c) the income relates to,-
    - (i) the financial year in which the individual ceases to be a non-resident; or
    - (ii) the financial year immediately succeeding the financial year in which the individual ceases to be a non-resident; and

- (d) the individual was a non-resident for nine years immediately preceding the financial year in which he has ceased to be a non-resident.
- 30. Any amount received from the Central Government, a State Government or a local authority by an individual, or his legal heir, by way of compensation on account of any disaster, as reduced by the amount received by the individual or his legal heir which has been allowed as a deduction under this Code on account of any loss or damage caused by such disaster.
- 31. The amount of interest on bonds-
  - (a) issued by a local authority or by a State Pooled Finance Entity; and
  - (b) specified by the Central Government by notification in the Official Gazette.
- 32. The amount of capital gain arising on account of-
  - (a) transfer of agricultural land situated in a rural area;
  - (b) transfer of any personal effect;
  - (c) transfer of Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government;
- 33. Gross rent in respect of any one palace in the occupation of a Ruler, if the annual value of the palace was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammun and Kashmir (Taxation Concessions) Order, 1958.



**THE SEVENTH SCHEDULE**

<b>S.No. (1)</b>	<b>Persons exempt (2)</b>
1.	Any office, or establishment, of the Central Government or the Government of a State;
2.	The Coffee Board.
3.	The Rubber Board.
4.	The Tea Board.
5.	The Tobacco Board.
6.	The Marine Products Export Development Authority.
7.	The Agricultural and Processed Food Products Export Development Authority.
8.	The Spices Board.
9.	The Prime Minister's National Relief Fund.
10.	The Prime Minister's Fund (Promotion of Folk Art).
11.	The Prime Minister's Aid to Students Fund.
12.	The National Foundation for Communal Harmony.
13.	The Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 (21 of 1860) upto the financial year ending on the 31st day of March, 2008.
14.	The Insurance Regulatory and Development Authority.
15.	A Mutual Fund.
16.	A venture capital company.
17.	A venture capital fund.
18.	New Pension System Trust.
19.	Any approved provident fund.
20.	Any approved superannuation fund.
21.	Any approved gratuity fund.
22.	The Deposit-linked Insurance Fund established under,- (a) the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948; (b) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
23.	The Employees' State Insurance Fund set up under the Employees' State Insurance Act, 1948.
24.	Any electoral trust, if- (a) ninety five percent of the aggregate of all donations received by it during the financial year and the surplus, if any, brought forward from any preceeding financial year is distributed to political parties; and (b) such electoral trust functions in accordance with the rules made by the Central Government.
25.	A corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them.
26.	Any body, institution or association wholly financed by Government and formed for promoting the interest of the members of the Scheduled Castes or the Scheduled Tribes or Backward classes.

27. Any corporation established by the Central or State Government for promoting the interests of the members of a minority community.
28. Any statutory corporation established for the welfare and economic upliftment of ex-servicemen being the citizens of India.
29. Any co-operative society formed for promoting the interests of the members of the Scheduled Castes or Scheduled Tribes if,-
  - (a) the membership of the co-operative society consists of only other co-operative societies formed for similar purposes; and
  - (b) the finances of the society are provided by the Government and such other societies.
30. Panchayat as referred to in clause (d) of article 243 of the Constitution
31. Municipality as referred to in clause (e) of article 243P of the Constitution
32. Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund
33. Cantonment Board as defined in section 3 of the Cantonments Act, 1924;
34. Any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.
35. Any fund set up, on or after 1st day of August, 1996, by an insurer under a pension scheme,-
  - (a) to which contribution is made by any person for the purpose of receiving pension from such fund; and
  - (b) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority.
36. An authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State.
37. Any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following,
  - (a) public religious or charitable trusts or
  - (b) endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship); or
  - (c) societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.
38. Any association, authority, body, institution or trust registered under any law of the Central, State or Provincial Government for the regulation of religious endowments.
39. The SAARC Fund for Regional Projects set up by Colombo Declaration.
40. Any income of the nature, and to the extent, notified by the Central Government, arising to a body or authority which -
  - (a) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government.
  - (b) is established or constituted or appointed not for the purposes of profit;
  - (c) is notified by the Central Government in the Official Gazette for the purposes of this clause.
41. The Central Electricity Regulatory Commission constituted under sub-section (1) of section 76 of the Electricity Act, 2003.

**THE EIGHTH SCHEDULE**  
**COMPUTATION OF PROFITS OF THE INSURANCE BUSINESS**

1. The profits of the business of life insurance shall be the profit determined in the Shareholders' Account (Non-Technical Account) in accordance with the Insurance Act, 1938.
2. The profits referred to in rule 1 shall be,-
  - (a) increased by the aggregate of the amounts referred to in sub-section (2) of section 31 to the extent such amounts are not included in the profits referred to in that rule; and
  - (b) decreased by the amount of negative profit computed under this Schedule in respect of the business of life insurance, for any financial year immediately preceding the relevant financial year.
3. The profits of the business of insurance other than life insurance shall be the profits disclosed in the annual accounts, copies of which are required to be furnished under the Insurance Act, 1938, to the Controller of Insurance.
4. The profits referred to in rule 3 shall be,-
  - (a) increased by the aggregate of,-
    - (i) the amounts referred to in sub-section (2) of section 31 to the extent such amounts are not included in the profits referred to in that rule; and
    - (ii) the amounts referred to in sub-section (4) of section 33 and sub-section (2) of section 34 to the extent such amounts have been claimed as a deduction in computing the profits referred to in that rule;
  - (b) decreased by the amount of negative profit computed under this Schedule in respect of the business of any insurance, other than life insurance, for any financial year immediately preceding the relevant financial year.
5. The profits of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.
6. The profits of the business of insurance shall be treated as 'nil' if the profits determined under rules 1 to 5 is negative.
7. The profits computed under rules 1 to 5 shall be presumed to have been computed,-
  - (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 33, sub-section (1) of section 34 and sections 35 to section 38;
  - (b) after giving full effect to any deduction allowable under sub-chapter-I of Chapter III in relation to the profits of the business of insurance.
8. The written down value of any business asset used in the business of insurance shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.

9. The amount of common costs (including depreciation) attributable to the business of insurance shall be determined in the prescribed manner.
  
10. The successor in a business reorganisation of the business of insurance shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for,-
  - (a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and
  - (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case.
  
11. For the purposes of this Schedule-
  - (a) “business of life insurance” means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938;
  - (b) “business of insurance” means,-
    - (i) the business of life insurance; and
    - (ii) the business of any insurance, not being life insurance.
  - (c) “common costs” means cost or expenditure incurred in the course of carrying on the business of insurance and any other business.
  - (d) “rule” means a rule contained in this Schedule; and
  - (e) world income in relation to the business of insurance of a person not resident in India shall be computed in the manner laid down in this Act for the computation of the profits of the business of insurance carried on in India.

**THE NINTH SCHEDULE**

**COMPUTATION OF INCOME FROM ANY OTHER SPECIAL SOURCE**

1. The income from any special source shall be computed in accordance with the provisions of this Schedule.
2. The income from any special source shall be,-
  - (a) the amount computed in accordance with the provisions of sections 44 to 53, if the income is in the nature of capital gains arising from transfer of an asset, being an equity share in a company or a unit of an equity oriented fund, and chargeable to securities transaction tax; or
  - (b) the amount of accrual or receipt, if the income is of any other nature.
3. The income computed under Rule 2 shall be presumed to have been computed after giving full effect to every loss, allowance or deduction under this Code.
4. The written down value of any business asset used for the purposes of earning income from any special source shall be computed as if the person has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.
5. The amount of common costs (including depreciation) attributable to the special source and presumed to have been allowed under Rule 3 shall be determined in the prescribed manner.

**THE TENTH SCHEDULE**  
**COMPUTATION OF PROFITS OF BUSINESS OF OPERATING**  
**A QUALIFYING SHIP**

1. The profits of the business of operating a qualifying ship for a financial year shall be determined in accordance with the formula-  

$$A + B - C$$
Where A = the total tonnage income of the financial year ;  
B = the aggregate of the amounts referred to in sub-section (2) of section 31; and  
C = the amount of negative profit computed under this Schedule in respect of the business of operating a qualifying ship , for any financial year immediately preceding the relevant financial year.
2. The tonnage income of the financial year in respect of each qualifying ship shall be the daily tonnage income of the ship multiplied by the number of days during which the ship is operated by the company as a qualifying ship.
3. The daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

**TABLE**

<i>Qualifying ship having net tonnage</i>	<i>Amount of daily tonnage income</i>
(1)	(2)
up to 1,000 tons	Rs. 46 for each 100 tons
exceeding 1,000 tons but not more than 10,000 tons	Rs. 460 plus Rs. 35 for each 100 tons exceeding 1,000 tons
exceeding 10,000 tons but not more than 25,000 tons	Rs. 3,610 plus Rs. 28 for each 100 tons exceeding 10,000 tons
exceeding 25,000 tons	Rs.7,810 plus Rs. 19 for each 100 tons exceeding 25,000 tons.

4. The profits of the business of operating a qualifying ship shall be treated as 'nil' if the profits determined under rule 1 is negative.
5. The profits computed under this Schedule shall be presumed to have been computed,-
  - (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 33, sub-section (1) of section 34 and sections 35 to section 38;
  - (b) after giving full effect to any deduction allowable under sub-chapter-I of Chapter III in relation to the profits of the business of operating a qualifying ship .
6. The written down value of any business asset used in the business of operating a qualifying ship shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.

7. The amount of common costs (including depreciation) attributable to the business of operating a qualifying ship shall be determined in the prescribed manner.
8. The successor in a business reorganisation of the business of operating a qualifying ship shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for,-
  - (a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and
  - (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case.
9. A company shall continue to be regarded as an operator of a qualifying ship even in the case of temporary cessation of operation of the ship.
10. A company shall not be regarded as the operator in respect of a ship if the ship has been chartered out by it on bareboat charter-cum-demise terms.
11. A ship shall not be considered as qualifying ship if it temporarily ceases to be a qualifying ship.
12. The Board may make rules for the purposes of computation of income from the business of operating a qualifying ship in respect of the following,-
  - (a) method and time for opting into the tonnage income scheme and the period for, and circumstances under, which the option shall remain in force;
  - (b) circumstances under which a company may be excluded from the tonnage income scheme;
  - (c) such other conditions for applicability of tonnage income scheme having regard to the need for generating internal accruals for acquiring new ships and training of crews;
  - (d) limits for charter in of tonnage;
  - (e) prevention of abuse of the tonnage income scheme, having regard to the need to ensure that no transaction or arrangement results, or but for the rule prescribed hereunder, would have resulted in a tax advantage being obtained for-
    - (i) a person other than a qualifying shipping company; or
    - (ii) a qualifying shipping company in respect of its activities other than its business of operating a qualifying ship ; and
  - (f) maintenance and audit of accounts.
13. For the purposes of this Schedule, unless the context otherwise requires,-
  - (a) “bareboat charter” means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;
  - (b) “bareboat charter-cum-demise” means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;
  - (c) “business of operating qualifying ships” means the core shipping activities and the permitted incidental shipping activities.
  - (d) “core shipping activities” means,-
    - (i) the activities relating to operation of a qualifying ship;

- (ii) the activities in connection with, or for the execution of, a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period by a qualifying ship;
  - (iii) on-board or on-shore activities of qualifying ship comprising of fares and food and beverages consumed on board; and
  - (iv) slot charters, space charters, joint charters, feeder services, or container box leasing, of a qualifying ship.
- (e) **“permitted incidental shipping activity”** means any activity relating to chartering out of a qualifying ship on bareboat charter terms, maritime consultancy, loading or unloading of cargo, ship management or maritime education or recruitment if the aggregate accruals or receipts from all such activity does not exceed one fourth per cent of the turnover from core shipping activities.
- (f) **“place of effective management of the company”** means-
- (i) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or
  - (ii) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions;
- (g) **“qualifying shipping company”** means a company, which fulfills all the following conditions namely: -
- (i) it is an Indian company;
  - (ii) the place of effective management of the company is in India;
  - (iii) it owns at least one qualifying ship; and
  - (iv) the main object of the company is to carry on the business of operating ships.
- (h) **“qualifying ship”** means a ship, which fulfills all the following conditions namely:-
- (i) it is a sea going ship or vessel of fifteen net tonnage or more;
  - (ii) it is a ship registered or licensed under, or for the purposes of the Merchant Shipping Act, 1958;
  - (iii) a certificate indicating the net tonnage of the ship has been issued under, or for the purposes of, the Merchant Shipping Act, 1958 and is in force;
  - (iv) it is owned or chartered in by the qualifying shipping company wholly, or partly in an arrangement such as slot charter, space charter, or joint charter; and
  - (v) the ship is not a,-
    - (A) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;
    - (B) fishing vessel as defined in clause (12) of section 3 of the Merchant Shipping Act, 1958;
    - (C) factory ship including a vessel providing processing services in respect of the processing of the fishing produce;



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- (D) pleasure craft, being a ship primarily used for the purposes sport or recreation;
  - (E) harbour and river ferries;
  - (F) offshore installations; and
  - (G) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.
- (i) “seagoing ship” means a ship if it is certified as such by the competent authority of any country;
  - (j) “tonnage” shall mean,-
    - (i) the tonnage specified on a certificate issued under, or for the purposes of, Merchant Shipping Act, 1958; and
    - (ii) the deemed tonnage in a case where an arrangement has been entered into by the qualifying company for purchase of slots, slot charter or sharing of a qualifying ship, calculated in the prescribed manner.
  - (k) “total tonnage income” shall mean the aggregate of tonnage income from operating of all the qualifying ships.

**THE ELEVENTH SCHEDULE**  
**COMPUTATION OF PROFITS OF THE BUSINESS OF**  
**MINERAL OIL OR NATURAL GAS**

1. The profits of the business of mineral oil or natural gas shall be the gross income from the business carried on by the assessee at any time during the financial year as reduced by the amount of business expenditure incurred by the assessee wholly and exclusively for the purposes of the business during the year.
2. The gross income referred to in rule 1 shall be the aggregate of,-
  - (a) the accruals or receipts derived by the assessee from,-
    - (i) the business of mineral oil or natural gas;
    - (ii) the leasing or transfer of whole of, or part of, or any interest in, any,-
      - (A) mineral oil or natural gas right; and
      - (B) asset used in the business of mineral oil or natural gas; and
    - (iii) the demolition, destruction, discarding or transferring of any business capital asset (other than land, goodwill or financial instrument) in respect of which deduction has been allowed, or allowable, under sub-rule 3 in any financial year; and
  - (b) the amounts referred to in sub-section (2) of section 31.
3. The amount of business expenditure referred to in rule 1 shall be the aggregate of the amount of,-
  - (a) operating expenditure referred to in section 33, incurred by the assessee;
  - (b) permitted finance charges referred to in section 34, incurred by the assessee;
  - (c) expenditure on any license charges, rental fees or other charges, if actually paid;
  - (d) expenditure on purchase, lease or rental of land or land rights;
  - (e) capital expenditure incurred by the assessee;
  - (f) expenditure on infructuous or abortive exploration of any area;
  - (g) expenditure referred to in clauses (a) to (f) incurred before commencement of the business;
  - (h) the amount of negative profit computed under this Schedule for any financial year immediately preceeding the relevant financial year.
4. The profits of the business of mineral oil or natural gas shall be treated as 'nil' if the profits determined under rule 1 is negative.
5. The profits computed under rule 1 shall be presumed to have been computed,-
  - (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 33, sub-section (1) of section 34 and sections 35 to section 38;
  - (b) after giving full effect to any deduction allowable under sub-chapter-I of Chapter III in relation to the profits of the business of mineral oil or natural gas.
6. The written down value of any business asset used in the business of mineral oil or natural gas shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.
7. The amount of common costs (including depreciation) attributable to the business of mineral oil or natural gas shall be determined in the prescribed manner.

8. The successor in a business reorganisation of the business of mineral oil or natural gas shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for,-
  - (a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and
  - (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case.
9. The deduction to the successor shall be allowed,-
  - (a) in the financial year immediately following the year in which the business reorganisation has taken place if the reorganisation is on the last day of the financial year; and
  - (b) in the same financial year if the business reorganisation has taken place at any other time during the financial year.
10. The provisions of this Schedule shall apply to the business referred to in rule 1, which fulfills all the following conditions, namely:-
  - (a) it is not set up by splitting up, or the reconstruction, of a business already in existence;
  - (b) it is not set up by the transfer to the specified business of machinery or plant previously used of any purpose.
11. For the purposes of this Schedule, unless the context otherwise requires,-
  - (a) **'business of mineral oil or natural gas'** means any business consisting of the prospecting for or extraction or production of mineral oil or natural gas;
  - (b) **'mineral oil'** means crude oil, being petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted;
  - (c) **'natural gas'** means any subsoil combustible gaseous fossil fuel;
  - (d) **'oil and gas right'** means any reconnaissance permit, technical cooperation permit, exploration right, or production right assigned under the Oilfields (Regulation and Development) Act, 1948, or any right or interest therein;
  - (e) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if-
    - (i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
    - (ii) the machinery or plant is imported into India from any country outside India; and
    - (iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;
  - (f) the condition specified in clause (ii) of sub-rule 10 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the business referred to in sub-rule 1, does not exceed twenty per cent of the total value of the machinery or plant used in the business;
  - (g) the capital expenditure referred to in sub-rule 3 shall not include any expenditure incurred on the acquisition of any land, goodwill or financial instrument.

**THE TWELVETH SCHEDULE**  
**COMPUTATION OF PROFITS OF THE BUSINESS OF**  
**DEVELOPING A SPECIAL ECONOMIC ZONE**

1. The provisions of this Schedule shall apply to the business of developing a special economic zone.
2. The profits of the business of developing a special economic zone shall be the gross income from the business carried on by the assessee at any time during the financial year as reduced by the amount of business expenditure incurred by the assessee, wholly and exclusively, for the purposes of the business during the year.
3. The gross income referred to in rule 1 shall be the aggregate of,-
  - (a) the accruals or receipts derived by the assessee from the business;
  - (b) the accruals or receipts derived by the assessee from the demolition, destruction, discarding or transferring of any business capital asset (other than land, goodwill or financial instrument) in respect of which deduction has been allowed, or allowable, under sub-rule 4 in any financial year; and
  - (c) the amounts referred to in sub-section (2) of section 31.
4. The amount of business expenditure referred to in rule 1 shall be the aggregate of the amount of,-
  - (a) operating expenditure referred to in section 33, incurred by the assessee;
  - (b) permitted finance charges referred to in section 34, incurred by the assessee;
  - (c) expenditure on any license charges, rental fees or other charges, if actually paid;
  - (d) expenditure on purchase, lease or rental of land or land rights;
  - (e) capital expenditure incurred by the assessee;
  - (f) expenditure referred to in clauses (a) to (e) incurred before commencement of the business;
  - (g) the amount of negative profit computed under this Schedule for any financial year immediately preceding the relevant financial year.
5. The profits of the business of developing a special economic zone shall be treated as 'nil' if the profits determined under rule 1 is negative.
6. The profits computed under rule 1 shall be presumed to have been computed,-
  - (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 33, sub-section (1) of section 34 and sections 35 to section 38;
  - (b) after giving full effect to any deduction allowable under sub-chapter-I of Chapter III in relation to the profits of the business of developing a special economic zone .
7. The written down value of any business asset used in the business of developing a special economic zone shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.

8. The amount of common costs (including depreciation) attributable to the business of developing a special economic zone shall be determined in the prescribed manner.
9. The successor in a business reorganisation of the business of developing a special economic zone shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for,-
  - (a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and
  - (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case.
10. The deduction to the successor shall be allowed,-
  - (a) in the financial year immediately following the year in which the business reorganisation has taken place if the reorganisation is on the last day of the financial year; and
  - (b) in the same financial year if the business reorganisation has taken place at any other time during the financial year.
11. The provisions of this Schedule shall apply to the business referred to in rule 1, which fulfills all the following conditions, namely:-
  - (a) it is not set up by splitting up, or the reconstruction, of a business already in existence;
  - (b) it is not set up by the transfer to the specified business of machinery or plant previously used of any purpose.
12. For the purposes of this Schedule, unless the context otherwise requires,-
  - (a) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if-
    - (i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
    - (ii) the machinery or plant is imported into India from any country outside India; and
    - (iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;
  - (b) the condition specified in clause (ii) of sub-rule 11 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the business referred to in sub-rule 1, does not exceed twenty per cent of the total value of the machinery or plant used in the business;
  - (c) the capital expenditure referred to in sub-rule 3 shall not include any expenditure incurred on the acquisition of any land, goodwill or financial instrument.

**THE THIRTEENTH SCHEDULE**  
**COMPUTATION OF PROFITS OF A SPECIFIED BUSINESS**

1. The provisions of this Schedule shall apply to the following specified businesses which fulfill the prescribed conditions and are notified by the Central Government in the Official Gazette :-
  - (a) business of generation, transmission or distribution of power;
  - (b) business of developing, or operating and maintaining, any infrastructure facility;
  - (c) business of operating and maintaining a hospital in any area, other than the excluded area;
  - (d) business of processing, preservation and packaging of fruits and vegetables.
  - (e) business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of the network;
  - (f) business of setting up and operating a cold chain facility; and
  - (g) business of setting up and operating a warehousing facility for storage of agricultural produce.
2. The profits of every specified business shall be computed separately under this Schedule.
3. The profits of any specified business shall be the gross income from the business carried on by the assessee at any time during the financial year as reduced by the amount of business expenditure incurred by the assessee, wholly and exclusively, for the purposes of the business during the year.
4. The gross income referred to in rule 1 shall be the aggregate of,-
  - (a) the accruals or receipts derived by the assessee from the business;
  - (b) the accruals or receipts derived by the assessee from the demolition, destruction, discarding or transferring of any business capital asset (other than land, goodwill or financial instrument) in respect of which deduction has been allowed, or allowable, under sub-rule 5 in any financial year; and
  - (c) the amounts referred to in sub-section (2) of section 31.
5. The amount of business expenditure referred to in rule 1 shall be the aggregate of the amount of,-
  - (a) operating expenditure referred to in section 33, incurred by the assessee;
  - (b) permitted finance charges referred to in section 34, incurred by the assessee;
  - (c) expenditure on any license charges, rental fees or other charges, if actually paid;
  - (d) expenditure on purchase, lease or rental of land or land rights;
  - (e) capital expenditure incurred by the assessee;
  - (f) expenditure referred to in clauses (a) to (e) incurred before commencement of the business;
  - (g) the amount of negative profit computed under this Schedule for any financial year immediately preceeding the relevant financial year.
6. The profits of the specified business shall be treated as 'nil' if the profits determined under rule 1 is negative.
7. The profits computed under rule 1 shall be presumed to have been computed,-

- (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 33, sub-section (1) of section 34 and sections 35 to section 38;
  - (b) after giving full effect to any deduction allowable under sub-chapter-I of Chapter III in relation to the profits of the specified business.
8. The written down value of any business asset used in the specified business shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.
9. The amount of common costs (including depreciation) attributable to the specified business shall be determined in the prescribed manner.
10. The successor in a business reorganisation of the specified business shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for,-
- (a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and
  - (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case.
11. The deduction to the successor shall be allowed,-
- (a) in the financial year immediately following the year in which the business reorganisation has taken place if the reorganisation is on the last day of the financial year; and
  - (b) in the same financial year if the business reorganisation has taken place at any other time during the financial year.
12. The provisions of this Schedule shall apply to the business referred to in rule 1, which fulfills all the following conditions, namely:-
- (a) it is not set up by splitting up, or the reconstruction, of a business already in existence;
  - (b) it is not set up by the transfer to the specified business of machinery or plant previously used of any purpose; and
  - (c) in a case where the business is of the nature referred to in clause (e) of sub-rule 1, the business,-
    - (i) is owned by a company formed and registered in India under the Companies Act, 1956 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
    - (ii) has been approved by the Petroleum and Natural Gas Regulatory Board established under the sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette in this behalf;
    - (iii) has made not less than one-third of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person; and
    - (iv) fulfils any other condition as may be prescribed.
13. For the purposes of this Schedule, unless the context otherwise requires,-
- (a) an “associated person”, in relation to the assessee, means a person,-

- (i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;
  - (ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent. of the voting power in the capital of the assessee;
  - (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or
  - (iv) who guarantees not less than ten per cent. of the total borrowings of the assessee;
- (b) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if-
- (i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
  - (ii) the machinery or plant is imported into India from any country outside India; and
  - (iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;
- (c) the condition specified in clause (ii) of sub-rule 11 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the business referred to in sub-rule 1, does not exceed twenty per cent of the total value of the machinery or plant used in the business;
- (d) the capital expenditure referred to in sub-rule 3 shall not include any expenditure incurred on the acquisition of any land, goodwill or financial instrument.
- (e) 'excluded area' means the area comprising-
- (i) Greater Mumbai urban agglomeration;
  - (ii) Delhi urban agglomeration;
  - (iii) Kolkata urban agglomeration;
  - (iv) Chennai urban agglomeration;
  - (v) Hyderabad urban agglomeration;
  - (vi) Bangalore urban agglomeration;
  - (vii) Ahmedabad urban agglomeration;
  - (viii) District of Faridabad;
  - (ix) District of Gurgaon;
  - (x) District of Gautam Budh Nagar;
  - (xi) District of Ghaziabad;
  - (xii) District of Gandhinagar; and
  - (xiii) City of Secunderabad; and
- (f) area comprising any urban agglomeration means the area included in the relevant urban agglomeration on the basis of the 2001 census.



**THE FOURTEENTH SCHEDULE**  
**DETERMINATION OF INCOME ON A PRESUMPTIVE BASIS**

- 1 The income from the business specified in column 2 of Table, carried on by the assessee at any time during the financial year, shall, notwithstanding anything contained in this sub-chapter, be the amount specified in column 3 thereof, subject to the conditions specified in column 4 therein.

**TABLE**

Sl.No.	Nature of Business	Amount of income	Conditions
(1)	(2)	(3)	(4)
1.	Buisness of plying, hiring or leasing of heavy goods vehicle.	The aggregate amount of income from all the heavy goods vehicles owned by the assessee, calculated at the rate of five thousand rupees from each heavy goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year.	The number of heavy goods vehicles owned by the assessee in the financial year should be ten or less.
2.	Business of plying, hiring or leasing of light goods vehicle.	The aggregate amount of income from all the light goods vehicles owned by the assessee, calculated at the rate of four thousand five hundred rupees from each light goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year.	The number of light goods vehicles owned by the assessee at any time in the financial year should be ten or less.
3.	Any business other than- (i) the business referred to in serial numbers 1 and 2; and (ii) any profession.	Eight per cent. of the total turnover, or gross receipts, of the assessee in the financial year from the business;	The total turnover or gross receipts of the assessee in the financial year from the business is one crore rupees or less.
4.	Business of civil construction in connection with a turnkey power project approved by the Central Government in this behalf.	The amount shall be a sum equal to ten per cent. of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the civil construction.	The assessee is a foreign company.
5.	Business of erection of plant or machinery or testing or commissioning thereof, in connection	The amount shall be a sum equal to ten per cent. of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on	The assessee is a foreign company.

Sl.No.	Nature of Business	Amount of income	Conditions
(1)	(2)	(3)	(4)
	with a turnkey power project approved by the Central Government in this behalf.	his behalf on account of erection, testing or commissioning.	
6.	Business of providing services or facilities in connection with the prospecting for, or extraction or production of, mineral oil.	<p>The amount shall be a sum equal to ten per cent. of aggregate of,-</p> <p>(i) the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils in India; and</p> <p>(ii) the amount received or deemed to be received in India, directly or indirectly, by or on behalf of the assessee on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils outside India;</p>	The assessee is a non-resident.
7.	Business of supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils.	<p>The amount shall be a sum equal to ten per cent. of aggregate of,-</p> <p>(i) the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and</p> <p>(ii) the amount received or deemed to be received in India, directly or indirectly, by or on behalf of the assessee on account of the supply of plant and machinery on hire used, or to be used, in</p>	The assessee is a non-resident.

Sl.No.	Nature of Business	Amount of income	Conditions
(1)	(2)	(3)	(4)
		the prospecting for, or extraction or production of, mineral oils outside India.	
8.	Business of operation of ships (including an arrangement such as slot charter, space charter or joint charter)	Seven and a half per cent. of transportation charges on account of the carriage of passengers, live-stock, mail or goods.	The assessee is a non-resident.
9.	Business of operation of aircraft (including an arrangement such as slot charter, space charter or joint charter).	Five per cent. of the transportation charges on account of the carriage of passengers, live-stock, mail or goods;	The assessee is a non-resident.

- 2 The amount of income determined under rule 1 shall be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified in that sub-section.
- 3 The income computed under Rule 1 shall be presumed to have been computed after giving full effect to every loss, allowance or deduction under this Code.
4. The written down value of any business asset used for the purposes of earning income from the business specified in column 2 of Table in rule 1 shall be computed as if the person has claimed and has been actually allowed the deduction in respect of depreciation under section 36, initial depreciation under section 37 and terminal allowance under section 38.
5. The amount of common costs (including depreciation) attributable to the business specified in column 2 of Table in rule 1 and presumed to have been allowed under Rule 3 shall be determined in the prescribed manner.
- 6 The provisions of this section shall not apply to-
  - (a) the business referred to in column 2 of the Table in rule (1) if,-
    - (i) the assessee keeps and maintains all the books of account and other documents referred to in section 85 in respect of the business regardless of anything to the contrary contained in that section;
    - (ii) the assessee gets his accounts audited and obtains a report of such audit as required under section 86 in respect of the business regardless of anything to the contrary contained in that section;
    - (iii) the accounts are correct and complete to the satisfaction of the Assessing Officer;
    - (iv) the income can be properly deduced from the accounts; and
    - (v) the assessee produces the books of accounts and other documents before the Assessing Officer, as and when called for;
  - (b) any income which is derived from any special source.

**THE FIFTEENTH SCHEDULE**  
**DEPRECIATION**  
*[See section 36]*

1. The allowance under sub-section (1) of section 36 in respect of depreciation of any block of assets, specified in column (3) of the Table below, shall be calculated at the percentages, specified in corresponding entry in column (4) of the said Table, on the written down value of such block of assets as are used for the purposes of the business of the assessee at any time during the financial year.

**TABLE OF RATES AT WHICH DEPRECIATION IS ADMISSIBLE**

Sr No	Class of assets	Block of assets	Depreciation allowance as percentage of written down value
(1)	(2)	(3)	(4)
<b>I.</b>	<b>Building</b>	(1) Buildings which are used mainly for residential purposes	5
		(2) Buildings which are purely temporary erections such as wooden structures	100
		(3) Buildings used as, or for,- (i) hotels or boarding houses (ii) railway station (iii) airport (iv) sea port, or (v) bus terminal	15
		(4) Any other building	10
<b>II</b>	<b>Furniture and fittings</b>	Furniture and fittings including electrical fittings	10
<b>III</b>	<b>Vehicles</b>	(1) Motor buses, motor lorries and motor cars, used in a business of running them on hire	30
		(2) Any other Motor bus, motor lorry or motor car	15
<b>IV</b>	<b>Aeroplanes</b>	Aeroplanes including aeroengines	40
<b>V</b>	<b>Rails</b>	(1) Engines, coaches and wagons	40
		(2) Rolling stock	15
<b>VI</b>	<b>Ships</b>	(1) Ocean-going vessels	20
		(2) Speed boats ordinarily operating on inland waters	20

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	(3) Any other vessel ordinarily operating on inland waters	20
<b>VII</b>	<b>Books</b>	
	(1) Annual publications used for carrying out a profession	100
	(2) Any other book used for carrying out a profession	60
	(3) Book used for carrying out a business of running lending libraries	100
	(4) Any other book	25
<b>VIII</b>	<b>Machinery and Plant</b>	
	(1) Moulds used in rubber and plastic goods factories	30
	(2) Air pollution control equipment	100
	(3) Water pollution control equipment	100
	(4) Solid waste control equipment	100
	(5) Life saving medical equipment	40
	(6) Containers made of glass, or plastic, used as refills	50
	(7) Computers including computer software	60
	(8) Energy saving devices	80
	(9) Renewable energy devices	80
	(10)Machinery and plant, used in semiconductor industry	30
	(11) Wooden parts used in artificial silks manufacturing machinery	100
	(12)Bulbs of studio lights used for cinematograph films	100
	(13)Wooden match frames used in match factories	100
	(14)Tubs, winding ropes, haulage ropes, sand stowing pipes and safety lamps used in mines and quarries	100
	(15)Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clayey material or any other similar material, used in salt works	100
	(16)Rollers used in flour mills or sugar works	80
	(17)Rolling mill rolls used in Iron and steel industry	80
	(18)Gas cylinders including valves and regulators	60
	(19)Glass manufacturing concerns - Direct fire glass melting furnaces	60
	(20)Returnable packages used in field operations (above ground) distribution by petroleum or natural gas concerns	60
	(21)Plant used in field operations (below ground) by petroleum or natural gas concerns	60
	(22)Any other machinery or plant	15

<b>(IX)</b>	<b>Scientific research assets</b>	All assets, other than land, used for scientific research	100
<b>(X)</b>	<b>Family planning asset</b>	All assets used by a company for the purpose of promoting family planning.	25
<b>(XA)</b>	<b>Animals</b>	Animals	0
<b>(XI)</b>	<b>Intangible assets</b>	<p>(1) Any right, by way of licence or franchise, to operate a business or to use a know-how, patent, copyright, trademark or any other business or commercial right of similar nature</p> <p>(2) Prescribed preliminary expenditure incurred</p> <p style="padding-left: 20px;">(a) before the commencement of the business; or</p> <p style="padding-left: 20px;">(b) in connection with the extension of the business; or</p> <p style="padding-left: 20px;">(c) in connection with the setting up of new business</p> <p>(3) Asset or project constructed, erected or set up by the assessee if,-</p> <p style="padding-left: 20px;">(a) benefit or advantage arises to the assessee over a fixed period not exceeding ten years;and</p> <p style="padding-left: 20px;">(b) asset is not owned by the assessee.</p> <p>(4) Asset or project constructed, erected or set up by the assessee if,-</p> <p style="padding-left: 20px;">(a) benefit or advantage arises to the assessee over a fixed period exceeding ten years;and</p> <p style="padding-left: 20px;">(b) asset is not owned by the assessee.</p>	<p>25</p> <p>25</p> <p>25</p> <p>20</p> <p>15</p>
<b>(XII)</b>	<b>Deferred revenue expenditure</b>	<p>(1) Non-compete fee</p> <p>(2) Premium for obtaining any asset on lease or rent</p> <p>(3) Amount paid to an employee in connection with his voluntary retirement in accordance with any scheme of voluntary retirement.</p> <p>(4) Expenditure incurred by an Indian company wholly and exclusively for the purposes of business reorganisation</p> <p>(5) Expenditure incurred by a person resident in India wholly and exclusively on any operations relating to prospecting for any mineral or the development of a mine or other natural deposit of any mineral, to the extent prescribed</p>	<p>25</p> <p>25</p> <p>25</p> <p>25</p> <p>15</p>

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2. No depreciation shall be allowed in respect of any machinery, or plant, if the actual cost thereof is allowed as a deduction in one or more years.
3. The deduction under section 35 in respect of an asset, acquired by the assessee during the financial year and put to use for the purposes of business for a period of less than one hundred and eighty days in that financial year, shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for the block of assets in which the asset falls, in the Table above.
4. The depreciation shall be hundred per cent. of the adjusted written down value of the block of assets referred to in the class of assets at serial number (XI) and (XII) of the Table, if the adjusted written down value of the block of assets is hundred thousand rupees or less.
5. In respect of any structure, or work, by way of renovation or improvement in, or in relation to, a building referred to in clause (b) of sub-section (2) of section 34, the percentage to be applied will be the percentage specified in any sub-item of the block of assets in serial number I of Table above, as may be appropriate to the class of building in, or in relation to, which the renovation or improvement is effected.
6. In respect of any structure constructed, or work done, by way of extension of any building referred to in clause (b) of sub-section (2) of section 34, the percentage to be applied will be the percentage specified in any sub-item of the block of assets in serial number I of the Table above, as would be appropriate, as if the structure, or work, constituted a separate building.
7. For the purposes of this Schedule, -
  - (a) **“Buildings”** shall include roads, bridges, culverts, wells and tubewells;
  - (b) a building shall be deemed to be a building used mainly for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent of its total built-up floor area and shall include any such building in the factory premises;
  - (c) **“Infrastructure industry asset”** shall include water treatment system for desalination, demineralisation and purification of water.as well as pipes needed for delivery from the source of supply of raw water to the plant and from the plant to the storage facility;
  - (d) **“Electrical fittings”** shall include electrical wiring, switches, sockets and other fittings and fans;
  - (e) **“Computer software”** shall mean any computer programme recorded on any disc, tape, perforated media or other information storage device;
  - (f) **“Speed boat”** shall mean a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at a speed, it will plane, i.e., its bow will rise from the water;
  - (g) **“Ocean going ships”** shall include dredgers, tugs, barges, survey launches, other similar ships used mainly for dredging purposes and fishing vessels with wooden hull;
  - (h) **“Air pollution control equipment”** shall mean -
    - (i) Electrostatic precipitation systems;
    - (ii) Felt-filter systems;
    - (iii) Dust collector systems;
    - (iv) Scrubber-counter current/venturi/packed bed/ cyclonic scrubbers; and
    - (v) Ash handling system and evacuation system.

- (i) **“Water pollution control equipment”** shall mean -
- (i) Mechanical screen systems;
  - (ii) Aerated detritus chambers (including air compressor);
  - (iii) Mechanically skimmed oil and grease removal systems;
  - (iv) Chemical feed systems and flash mixing equipment;
  - (v) Mechanical flocculators and mechanical reactors;
  - (vi) Diffused air/mechanically aerated activated sludge systems;
  - (vii) Aerated lagoon systems;
  - (viii) Biofilters;
  - (ix) Methane-recovery anaerobic digester systems;
  - (x) Air floatation systems;
  - (xi) Air/steam stripping systems;
  - (xii) Urea Hydrolysis systems;
  - (xiii) Marine outfall systems;
  - (xiv) Centrifuge for dewatering sludge;
  - (xv) Rotating biological contractor or bio-disc;
  - (xvi) Ion exchange resin column; and
  - (xvii) Activated carbon column.
- (j) **“Solidwaste control equipments”** shall mean -
- (i) caustic/lime/chrome/mineral/ cryolite recovery systems; and
  - (ii) Solidwaste recycling and resource recovery systems.
- (k) **“Life saving medical equipment”** shall mean -
- (i) D.C. Defibrillators for internal use and pace makers;
  - (ii) Haemodialysors;
  - (iii) Heart lung machine;
  - (iv) Cobalt Therapy Unit;
  - (v) Colour Doppler;
  - (vi) SPECT Gamma Camera;
  - (vii) Vascular Angiography System including Digital subtraction Angiography;
  - (viii) Ventilator used with anaesthesia apparatus;
  - (ix) Magnetic Resonance Imaging System;
  - (x) Surgical Laser;
  - (xi) Ventilators other than those used with anaesthesia;
  - (xii) Gamma knife;
  - (xiii) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for chemotherapy;
  - (xiv) Fibre optic endoscopes including, Paediatric resectoscope/audit resectoscope, Peritoneoscopes, Arthroscope, Microlaryngoscope, Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo Bronchoscope, Video Laryngo Bronchoscope and Video Oesophago Gastroscope, Stroboscope, Fibreoptic Flexible Oesophago gastrocope; or
  - (xv) Laparoscope (single incision);
- (l) **“Energy saving device”** shall mean -
- (i) Specialised boilers and furnaces, being-
    - (A) Ignifluid/fluidized bed boilers;
    - (B) Flameless furnaces and continuous pusher type furnaces;
    - (C) Fluidized bed type heat treatment furnaces; or
    - (D) High efficiency boilers (thermal efficiency higher than 75 per cent in case of coal fired and 80 per cent in case of oil/gas fired boilers);



- (ii) Instrumentation and monitoring system for monitoring energy flows, being-
  - (A) Automatic electrical load monitoring systems;
  - (B) Digital heat loss meters;
  - (C) Micro-processor based control systems;
  - (D) Infra-red thermography;
  - (E) Meters for measuring heat losses, furnace oil flow, steam flow, electric energy and power factor meters;
  - (F) Maximum demand indicator and clamp on power meters;
  - (G) Exhaust gases analyzer;or
  - (H) Fuel oil pump test bench;
- (iii) Waste heat recovery equipment, being -
  - (A) Economisers and feed water heaters;
  - (B) Recuperators and air pre-heaters;
  - (C) Heat pumps;or
  - (D) Thermal energy wheel for high and low temperature waste heat recovery;
- (iv) Co-generation systems, being-
  - (A) Back pressure pass out, controlled extraction, extraction-cum-condensing turbines for co-generation along with pressure boilers;
  - (B) Vapour absorption refrigeration systems;
  - (C) Organic rankine cycle power systems;or
  - (D) Low inlet pressure small steam turbines;
- (v) Electrical equipment, being -
  - (A) Shunt capacitors and synchronous condenser systems;
  - (B) Automatic power cut off devices (relays) mounted on individual motors;
  - (C) Automatic voltage controller;
  - (D) Power factor controller for AC motors;
  - (E) Solid state devices for controlling motor speeds;
  - (F) Thermally energy-efficient stenters (which require 800 or less kilocalories of heat to evaporate one kilogram of water);
  - (G) Series compensation equipment;
  - (H) Flexible AC Transmission (FACT) devices - Thyristor controlled series compensation equipment;
  - (I) Time of Day (ToD) energy meters;
  - (J) Equipment to establish transmission highways for National Power Grid to facilitate transfer of surplus power of one region to the deficient region;
  - (K) Remote terminal units/intelligent electronic devices, computer hardware/software, router/bridges, other required equipment and associated communication systems for supervisory control and data acquisition systems, energy management systems and distribution management systems for power transmission systems;or
  - (L) Special energy meters for Availability Based Tariff (ABT);
- (vi) Burners, being -
  - (A) 0 to 10 per cent excess air burners;
  - (B) Emulsion burners; or
  - (C) Burners using air with high pre-heat temperature (above 300°C); and
- (vii) Other energy saving device, being -
  - (A) Wet air oxidation equipment for recovery of chemicals and heat;
  - (B) Mechanical vapour recompressors;
  - (C) Thin film evaporators;
  - (D) Automatic micro-processor based load demand controllers;

- (E) Coal based producer gas plants;
  - (F) Fluid drives and fluid couplings;
  - (G) Turbo charges/super-charges;or
  - (H) Sealed radiation sources for radiation processing plants.
- (m) **“Renewal energy device”** shall mean -
- (i) Flat plate solar collectors;
  - (ii) Concentrating and pipe type solar collectors;
  - (iii) Solar cookers;
  - (iv) Solar water heaters and systems;
  - (v) Air/gas/fluid heating systems;
  - (vi) Solar crop driers and systems;
  - (vii) Solar refrigeration, cold storages and air conditioning systems;
  - (viii) Solar steels and desalination systems;
  - (ix) Solar power generating systems;
  - (x) Solar pumps based on solar-thermal and solar-photovoltaic conversion;
  - (xi) Solar-photovoltaic modules and panels for water pumping and other applications;
  - (xii) Wind mills and any specially designed devices which run on wind mills;
  - (xiii) Any special devices including electric generators and pumps running on wind energy;
  - (xiv) Biogas-plant and biogas-engines;
  - (xv) Electrically operated vehicles including battery powered or fuel-cell powered vehicles;
  - (xvi) Agricultural and municipal waste conversion devices producing energy;
  - (xvii) Equipment for utilising ocean waste and thermal energy;or
  - (xviii) Machinery and plant used in the manufacture of any of the above sub-items.
- (n) **“Machinery and plant used in semi-conductor industry”** shall mean machinery and plant used in semiconductor industry covering all integrated circuits (ICs) (excluding hybrid integrated circuits) ranging from small scale integration (SSI) to large scale integration/very large scale integration (LSI/VLSI) as also discrete semi-conductor devices such as diodes, transistors, thyristors, triacs, etc., other than
- (i) air pollution control equipment;
  - (ii) water pollution control equipment;
  - (iii) solid waste control equipment;
  - (iv) wooden parts used in artificial silks manufacturing machinery;
  - (v) bulbs of studio lights used for cinematograph films;
  - (vi) wooden match frames used in match factories;
  - (vii) tubs, winding ropes, haulage ropes, sand stowing pipes and safety lamps used in mines and quarries; and
  - (viii) salt pans, reservoirs and condensers, etc., made of earthy, sandy or clayey material or any other similar material, used in salt works.

**THE SIXTEENTH SCHEDULE  
DEDUCTION FOR DONATION**

**PART A  
DONATIONS ELIGIBLE FOR HUNDRED AND TWENTY-FIVE PER CENT  
DEDUCTION**

1. Any scientific research association or National Laboratory, if-
  - (a) it is engaged in carrying on scientific research; and
  - (b) it is for the time being approved as a scientific research association, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and
2. Any university, college or other institution if,-
  - (a) it is engaged in carrying on scientific research, statistical research or research in social science; and
  - (b) it is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed.

**PART B  
DONATIONS ELIGIBLE FOR HUNDRED PERCENT DEDUCTION**

1. The National Defence Fund set up by the Central Government.
2. The Prime Minister's National Relief Fund.
3. The Prime Minister's Armenia Earthquake Relief Fund.
4. The Africa (Public Contributions - India) Fund.
5. The National Foundation for Communal Harmony.
6. A University or any educational institution of national eminence as may be approved by the prescribed authority in this behalf.
7. Any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of improvement of primary education in villages and towns in such district and for literacy and post-literacy activities.
8. The National Blood Transfusion Council or to any State Blood Transfusion Council which has its sole object the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.
9. Any fund set up by a State Government to provide medical relief to the poor.
10. The Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.
11. The National Illness Assistance Fund.
12. The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be, where such Fund is-
  - (a) the only Fund of its kind established in the State or the Union territory, as the case may be;
  - (b) under the overall control of the State or the Union territory, as the case may be;
  - (c) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be.

13. The National Sports Fund set up by the Central Government.
14. The National Cultural Fund set up by the Central Government.
15. The Fund for Technology Development and Application set up by the Central Government.
16. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (1) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).
17. The Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning.
18. The Indian Olympic Association or to any other association or institution established in India, as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf for-
  - (a) the development of infrastructure for sports and games; or
  - (b) the sponsorship of sports and games, in India and where the sum is paid by an assessee, being a company.
19. A rural development fund set up and notified by the Central Government in the Official Gazette.
20. The National Urban Poverty Eradication Fund set up and notified by the Central Government in the official Gazette.

**PART C**  
**DONATIONS ELIGIBLE FOR FIFTY PER CENT DEDUCTION**

1. The Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964.
2. The Prime Minister's Drought Relief Fund.
3. The National Children's Fund.
4. The Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985.
5. The Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991.
6. Any other fund or any institution which is approved under section 95;
7. The Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning.
8. An authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.
9. Any corporation established by the Central Government or any State Government for promoting the interests of the interest of a minority community.
10. Any temple, mosque, gurdwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States, for the renovation or repair of such temple, mosque, gurdwara, church or other place.

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Note:- For the purposes of item 7 of Part B, "town" means a town which has a population not exceeding one lakh according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

**SEVENTEENTH SCHEDULE****DETERMINATION OF COST OF ACQUISITION IN CERTAIN CASES**

<b>Sl.No</b>	<b>Nature of capital asset</b>	<b>Mode of acquisition</b>	<b>Cost of acquisition of the capital asset</b>
01	Shares in an amalgamated company, being an Indian company	By way of transfer referred to in clause (g) of sub-section (1) of section 45.	The cost of acquisition to the assessee of the shares in the amalgamating company
02.	Shares or debenture in a company	By way of transfer referred to in clause (j) or clause (k) of sub-section (1) of section 45.	That part of the cost of bond, debenture, debenture-stock or deposits certificates in relation to which the capital asset is acquired by the assessee.
03.	Shares in the resulting company.	by way of a transfer effected under a scheme of demerger.	The amount which bears to the cost of acquisition of shares held by the assessee in the demerged company, the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such merger.
04.	Any right in the nature of an entitlement to subscribe to shares or any other security.	By virtue of holding any share or any other security.	Nil
05.	Shares or any other security.	By way of subscription to an entitlement by virtue of holding any share or any other security.	The amount actually paid by the assessee to the company or institution, as the case may be, for acquiring the capital asset.
06.	Shares or any other security.	By way of purchase of the right in the nature of an entitlement to subscribe the shares or any other security.	The aggregate of the amount of purchase price paid by the assessee to the person renouncing the right and the amount paid by him to the company or institution, as the case may be, for acquiring the capital asset.
07.	Shares or any other security.	By way of allotment on the basis of holding any share or any other security.	Nil.

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08. Any sweat equity shares.	By way of allotment or transfer, directly or indirectly, by an employer to his employee(including former employees)	The fair market value of the sweat equity shares which has been taken into account while computing the value of fringe benefits under section 105
09. Trading or clearing rights of a recognised stock exchange in India acquired by a shareholder.	Under a scheme of demutualisation or corporatisation approved by the Securities and Exchange Board of India.	Nil
10. Shares of a recognised stock exchange in India	Under a scheme of demutualisation or corporatisation approved by the Securities and Exchange Board of India.	Cost of acquisition by the assessee of his original membership of the Exchange.
11. Shares or stocks of a company.	(a) in pursuance of consolidation or division of all or any of the share capital of the company into shares of larger amount or smaller amount respectively, than its existing shares; or (b) by way of conversion of any shares of the company into stock of the same company, or re-conversion thereof; or (c) by way of conversion of one kind of shares of the company into another kind of the same company.	The cost of acquisition of the shares or stock from which the capital asset is derived.
12. Original shares in the demerged company.	By way of transfer in any manner.	The cost of acquisition of the original shares held by the assessee in the demerged company immediately before the demerger as reduced by the amount as so arrived at under column (4) of Sl.No.3 of this Table

**THE EIGHTEENTH SCHEDULE**  
**Minerals and Group of Associated Minerals**

**PART A Minerals**

1. Aluminium ores.
2. Apatite and phosphatic ores.
3. Beryl.
4. Chrome ore.
5. Coal and lignite.
6. Columbite, Samarskite and other minerals of the “rare earths “ group.
7. Copper.
8. Gold.
9. Gypsum.
10. Iron ore.
11. Lead.
12. Manganese ore.
13. Molybdenum.
14. Nickel ores.
15. Platinum and other precious metals and other ores.
16. Pitchblende and other uranium ores.
17. Precious stones.
18. Rutile.
19. Silver.
20. Sulphur and its ores.
21. Tin.
22. Tungsten ores.
23. Uraniferous allanite, monazite and other thorium minerals.
24. Uranium bearing tailings left over from ores after extraction of copper and gold, ilmenite and other titanium ores.
25. Vanadium ores.
26. Zinc.
27. Zircon

**Part B**  
**Groups of Associated Minerals**

1. Apatite, Beryl, Cassiterite, Columbite, Emerald, Felspar, Lepidolite, Mica, Pitchblende, Quartz, Samarskite, Scheelite, Topaz, Tantalite, Tourmaline.
2. Iron, Manganese, Titanium, Vanadium and Nickel minerals.
3. Lead, Zinc, Copper, Cadmium, Arsenic, Antimony, Bismuth, Cobalt, Nickel, Molybdenum, and Uranium minerals, and Gold and Silver, Arsinopyrite, Chalcopyrite, Pyrite, Pyphrotite and Pentalandite.
4. Chromium, Osmiridium, Platinum, and Nickel minerals.
5. Kyanite, Sillimanite, Corundum, Dumortierite and Topaz.
6. Gold, Silver, Tellurium, Selenium and Pyrite.
7. Barytes, Fluorite, Chalcocite, Selenium, and minerals of Zinc, Lead and Silver.
8. Tin and Tungsten minerals.
9. Limestone, Dolomite and Magnesite
10. Ilmenite, Monazite, Zircon, Rutile, Garnet and Sillimanite.
11. Sulphides of copper and iron.
12. Coal, Fireclay and Shale.
13. Magnetite and Apatite.
14. Magnesite and Chromite.
15. Talc (Soapstone and Steatite) and Dolomite.
16. Bauxite, Laterite, Aluminous Clays, Lithomarge, Titanium, Vanadium, Gallium and Columbium minerals.