

THE FIRST SCHEDULE**INSURANCE BUSINESS**

[See section 44]

*A.—Life insurance business***Profits of life insurance business to be computed separately.**

1. In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.

⁴[Computation of profits of life insurance business.

2. The profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period.]

Deductions.

3. [Omitted by the Finance Act, 1976, w.e.f. 1-4-1977. Earlier, the rule was first amended by the Finance Act, 1966, w.e.f. 1-4-1966 and by the Finance Act, 1965, w.e.f. 1-4-1965.]

Adjustment of tax paid by deduction at source.

4. Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

*B.—Other insurance business***Computation of profits and gains of other insurance business.**

5. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance, subject to the following adjustments:—

- (a) subject to the other provisions of this rule, any expenditure or allowance ⁵[including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed] which is not admissible under the provisions of sections 30 to ⁶[43B] in computing the profits and gains of a business shall be added back;

4. Substituted by the Finance Act, 1976, w.e.f. 1-4-1977.

5. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1989.

6. Substituted for "43A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, "43A" was substituted for "43" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

⁷(b) [***]

⁸(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction.

C.—Other provisions

Profits and gains of non-resident person.

6. (1) The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.

(2) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in India shall be computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in India.

Interpretation.

7. (1) For the purposes of these rules—

(i) ⁹[***];

(ii) “investments” includes securities, stocks and shares;

(iii) ¹⁰[***];

(iv) “life insurance business”¹¹ means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938) ;

(v) “rule” means a rule contained in this Schedule.

7. Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its omission, clause (b) stood as under :

“(b) any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts on account of appreciation of or gains on the realisation of investments shall be treated as part of the profits and gains :

Provided that the Assessing Officer is satisfied about the reasonableness of the amount written off or reserved in the accounts, as the case may be, to meet depreciation of or loss on the realisation of investment;”

8. See rule 6E for limits prescribed for amount that can be carried over to a ‘reserve for unexpired risk’ (50 per cent of net premium in case of fire and miscellaneous insurance business and 100 per cent of net premium in case of marine insurance business.)

9. Omitted by the Finance Act, 1976, w.e.f. 1-4-1977. Earlier, clause (i) was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

10. Omitted by the Finance Act, 1976, w.e.f. 1-4-1977.

11. Clause (11) of section 2 of the Insurance Act, 1938 defines “life insurance business” as follows :

“(11) “life insurance business” means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;

(Contd. on p. 1.823)

(2) References in these rules to the Insurance Act, 1938 (4 of 1938), or any provision thereof, shall, in relation to the Life Insurance Corporation of India, be construed as references to that Act or provision as read with section 43¹² of the Life Insurance Corporation Act, 1956 (31 of 1956).

THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

¹³[[*See* sections 222 and 276]]

PART I

GENERAL PROVISIONS

Definitions.

1. In this Schedule, unless the context otherwise requires,—

- ¹⁴[(a) “certificate”, except in rules 7, 44, 65 and sub-rule (2) of rule 66, means the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section;]
- (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.

(Contd. from p. 1.822)

- (b) the granting of annuities upon human life; and
- (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such person;*

12. For text of section 43 of the Life Insurance Corporation Act, 1956, *see* **Appendix One**.

13. Substituted for “[*See* section 222]” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

14. Substituted, *ibid.*, for the following :

- ‘(a) “certificate” means a certificate received by the Tax Recovery Officer from the *Assessing Officer for the recovery of arrears under this Schedule;’

*Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

Issue of notice.

2. ¹⁵[When a certificate has been drawn up by the Tax Recovery Officer] for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

When certificate may be executed.

3. No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

Mode of recovery.

4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by arrest of the defaulter and his detention in prison;
- (d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

Interest, costs and charges recoverable.

5. There shall be recoverable, in the proceedings in execution of every certificate,—

- (a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220, and
- (b) all charges incurred in respect of—
 - (i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the arrears.

15. Substituted for "When a certificate has been received by the Tax Recovery Officer from the *Assessing Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

*Substituted for "Income-tax", *ibid.*, w.r.e.f. 1-4-1988.

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.

¹⁶**[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

16. Substituted for the following by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989:

“8. *Disposal of proceeds of execution.*—(1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner:—

- (a) there shall first be paid to the *Assessing Officer the costs incurred by him;
- (b) there shall, in the next place, be paid to the *Assessing Officer the amount due under the certificate in execution of which the assets were realised;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the *Assessing Officer therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realised; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the *Assessing Officer to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.”

*Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

- (c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.]

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

9. Except as otherwise expressly provided in this Act, every question arising between the ¹⁷[Tax Recovery] Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate ¹⁸[***], or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises :

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

Property exempt from attachment.

10. (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

- (a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

- (b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

17. Substituted for “*Assessing” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, w.r.e.f. 1-4-1988.

18. “duly filed under this Act” omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

Removal of attachment on satisfaction or cancellation of certificate.

12. Where—

- (a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or
- (b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

Officer entitled to attach and sell.

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

Defaulting purchaser answerable for loss on resale.

14. Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the ¹⁹[Tax Recovery] Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

19. Substituted for “*Assessing” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, w.r.e.f. 1-4-1988.

Adjournment or stoppage of sale.

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

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

Prohibition against bidding or purchase by officer.

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

Prohibition against sale on holidays.

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

Assistance by police.

19. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply 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.

²⁰[**Entrustment of certain functions by Tax Recovery Officer.**

19A. A Tax Recovery Officer may, with the previous approval of the ²¹[Joint] Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.]

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

Attachment

Warrant.

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

Service of copy of warrant.

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

Attachment.

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

Property in defaulter's possession.

23. Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment

20. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to the substitution, rule 19A, as inserted by the Finance Act, 1963, with retrospective effect from 1-4-1962 and later on amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, stood as under:

“19A. *Entrustment of certain functions by Collector or Additional Collector.*—(1) A Tax Recovery Officer, being a Gazetted Officer of the Central Government, who is authorised to exercise the powers of a Tax Recovery Officer under this Act, may entrust any of his functions as 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:

Provided that where the Tax Recovery Officer is an Income-tax Officer any entrustment under this sub-rule shall be made only with the approval of the Deputy Commissioner. (2) A Tax Recovery Officer, being a Collector or an Additional Collector, may, subject to the approval of the State Government, entrust any of his functions as Tax Recovery Officer to any other officer lower than him in rank who is empowered to effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State and such officer shall, in relation to functions so entrusted to him, be deemed to be a Tax Recovery Officer.”

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

shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

Agricultural produce.

24. Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where such produce is growing crop,—on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

Provisions as to agricultural produce under attachment.

25. (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient;²²[and he shall have power to defray the cost of such arrangements].

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax

22. Substituted for “and the *Assessing Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangement” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, w.r.e.f. 1-4-1988.

Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Debts and shares, etc.

26. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;
- (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of decree.

27. (1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

- (i) the Tax Recovery Officer cancels the notice, or
- (ii) the ²³[Tax Recovery] Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the ²³[Tax Recovery] Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908),

23. Substituted for “*Assessing” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, w.r.e.f. 1-4-1988.

proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The ²⁴[Tax Recovery] Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Share in movable property.

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

Salary of Government servants.

29. Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

Attachment of negotiable instrument.

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

Attachment of property in custody of court or public officer.

31. Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the ²⁴[Tax Recovery] Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of partnership property.

32. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct

24. Substituted for “*Assessing” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, with retrospective effect from 1-4-1988.

accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

Inventory.

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

Attachment not to be excessive.

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

Seizure between sunrise and sunset.

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

Power to break open doors, etc.

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

Sale

Sale.

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

Issue of proclamation.

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

Proclamation how made.

39. (1) Such proclamation shall be made by beat of drum or other customary mode,—

(a) in the case of property attached by actual seizure—

(i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and

(ii) at such other places as the Tax Recovery Officer may direct;

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Sale after fifteen days.

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

Sale of agricultural produce.

41. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered—at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

42. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (*e.g.*, as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale to be by auction.

43. The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied

by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

Sale by public auction.

44. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

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

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

Negotiable instruments and shares in a corporation.

46. Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Order for payment of coin or currency notes to the ²⁵[Assessing] Officer.

47. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, ²⁶[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].

25. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988.

26. Substituted for "direct that such coins or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the *Assessing Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.*, with retrospective effect from 1-4-1988.

PART III**ATTACHMENT AND SALE OF IMMOVABLE PROPERTY***Attachment***Attachment.**

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

Service of notice of attachment.

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

Proclamation of attachment.

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

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

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

*Sale***Sale and proclamation of sale.**

52. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation.

53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(a) the property to be sold;

(b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for the recovery of which the sale is ordered; ²⁷[***]

²⁸[(cc) the reserve price, if any, below which the property may not be sold; and]

27. "and" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

28. Inserted, *ibid.*

- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation.

54. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

Time of sale.

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

Sale to be by auction.

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

²⁹[**Provided** that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53.]

Deposit by purchaser and resale in default.

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

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

Procedure in default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be

29. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority to bid.

59. ³⁰[(1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an ³¹[Assessing] Officer, if so authorised by the ³²[Chief Commissioner or Commissioner] in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale.]

³³[(2)] All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

³⁴[(3) Where the ³¹[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 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.]

Application to set aside sale of immovable property on deposit.

60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

³⁵(a) ³⁶[***] 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 ³⁷[fifteen] per cent per annum, 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.

30. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

31. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988.

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

33. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

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

35. See rule 119A.

36. "for payment to the *Assessing Officer" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.*, with retrospective effect from 1-4-1988.

37. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984; section 84 of the Amendment Act has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984 and also in cases where the interest became chargeable or payable from an earlier date. Earlier, "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972 and "nine" was substituted for "six" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

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

61. Where immovable property has been sold in execution of a certificate,³⁸[such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

- (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and
- (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

Setting aside sale where defaulter has no saleable interest.

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

Confirmation of sale.

63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

Return of purchase money in certain cases.

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

38. Substituted for “*Assessing Officer” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, with retrospective effect from 1-4-1988.

Sale certificate.

65. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

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

66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh proclamation before re-sale.

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

Bid of co-sharer to have preference.

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

³⁹**[Acceptance of property in satisfaction of amount due from the defaulter.**

68A. (1) Without prejudice to the provisions contained in this Part, an ⁴⁰[Assessing] Officer, duly authorised by the ⁴¹[Chief Commissioner or Commissioner] in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 59, at such price as may be agreed upon between the ⁴⁰[Assessing] Officer and the defaulter.

39. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

40. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988.

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

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the ⁴²[Assessing] Officer and on the date the possession of the property is delivered to the ⁴²[Assessing] Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the ⁴²[Assessing] Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the ⁴²[Assessing] Officer fails to pay such excess within the period aforesaid, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at twelve per cent per annum to the defaulter on such amount.]

⁴³[**Time limit for sale of attached immovable property.**]

68B. (1) No sale of immovable property shall be made under this Part after the expiry of three years⁴⁴ from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period—

- (i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or
- (ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or
- (iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

42. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

43. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

44. Period is extended to 4 years, see Notification No. 9995 [F.No. 275/138/95-IT(B)], dated 1-3-1996. For details, see Taxmann's Master Guide to Income-tax Act.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.]

PART IV

APPOINTMENT OF RECEIVER

Appointment of receiver for business.

69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

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

Appointment of receiver for immovable property.

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

Powers of receiver.

71. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal of management.

72. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

ARREST AND DETENTION OF THE DEFAULTER

Notice to show cause.

73. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied—

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after ⁴⁵[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 ⁴⁵[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.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

⁴⁶[(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.]

(4) Every person arrested in pursuance of a warrant of arrest under ⁴⁷[this rule] shall be brought before the Tax Recovery Officer ⁴⁸[issuing the warrant] as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

⁴⁸[*Explanation.*—For the purposes of this rule, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.]

Hearing.

74. When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under

45. Substituted for “the receipt of the certificate in the office of the Tax Recovery Officer” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

46. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

47. Substituted for “sub-rule (2) or sub-rule (3)”, *ibid*.

48. Inserted, *ibid*.

rule 73, ⁴⁹[the Tax Recovery Officer shall give the defaulter] an opportunity of showing cause why he should not be committed to the civil prison.

Custody pending hearing.

75. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of detention.

76. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

Detention in and release from prison.

77. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

- (a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees—for a period of six months, and
- (b) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

⁵⁰[(ii) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.]

49. Substituted for “the Tax Recovery Officer shall proceed to hear the *Assessing Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, with retrospective effect from 1-4-1988.

50. Substituted for the following by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989:

“(ii) on the request of the *Assessing Officer who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.”

*Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

⁵¹[***]

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

Release.

78. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the rearrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Release on ground of illness.

79. (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Entry into dwelling house.

80. For the purpose of making an arrest under this Schedule—

- (a) no dwelling house shall be entered after sunset and before sunrise;
- (b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

51. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, proviso, as amended by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988, stood as under:

“**Provided** that where he is to be released on the request of the *Assessing Officer, he shall not so be released without the order of the Tax Recovery Officer.”

*Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988.

- (c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors, etc.

81. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

- (a) a woman, or
 (b) any person who, in his opinion, is a minor or of unsound mind.

PART VI

MISCELLANEOUS

Officers deemed to be acting judicially.

82. Every ⁵²[Chief Commissioner or Commissioner], Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

Power to take evidence.

83. Every ⁵³[Chief Commissioner or 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.

84. No certificate shall cease to be in force by reason of the death of the defaulter.

Procedure on death of defaulter.

85. ⁵⁴[If at any time after the certificate is drawn up by the Tax Recovery Officer] the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

52. Substituted for "Tax Recovery Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

53. Substituted, *ibid.*

54. Substituted for "If at any time after the issue of the certificate by the *Assessing Officer to the Tax Recovery Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.*, with retrospective effect from 1-4-1988.

Appeals.

86. ⁵⁵[(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.

⁵⁶[(4) Notwithstanding anything contained in sub-rule (1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.]

Review.

87. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the ⁵⁷[Chief Commissioner or Commissioner], Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

55. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, rule 86, as substituted by the Finance Act, 1963, with retrospective effect from 1-4-1962 and again by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972, stood as under:

“(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—

- (a) in the case of a Tax Recovery Officer, being a Collector or an Additional Collector, to the revenue authority to which appeals ordinarily lie against the orders of a Collector under the law relating to land revenue of the State concerned;
- (b) in the case of a Tax Recovery Officer, being an officer referred to in sub-clause (ii) of clause (44) of section 2, to the revenue authority to which an appeal or an application for revision would ordinarily lie, if the order passed by him were the order under the law relating to land revenue or other public demand for the time being in force in the State concerned; and
- (c) in the case of a Tax Recovery Officer, being an officer referred to in sub-clause (iii) of clause (44) of section 2, to the Tax Recovery Commissioner.”

56. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (4), as inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972, stood as under:

“(4) Notwithstanding anything contained in sub-rule (1), where a Tax Recovery Commissioner is authorised to exercise powers as such in respect of any area, then,—

- (a) 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 Tax Recovery Commissioner; and
- (b) any proceeding by way of appeal against any orders referred to in clause (a) pending on the date mentioned in that clause before an appellate authority referred to in clause (a) or clause (b) of sub-rule (1) shall stand transferred to such Tax Recovery Commissioner for disposal.”

57. Substituted for “Tax Recovery Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

Recovery from surety.

88. Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

Penalties.

89. ⁵⁸[Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.]

Subsistence allowance.

90. (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the ⁵⁹[Tax Recovery Officer].

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

Forms.

91. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

Power to make rules.

92. (1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by ⁶⁰[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 ⁶⁰[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

58. Prior to its omission, rule 89 stood as under:

“Whoever 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, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code (45 of 1860).”

59. Substituted for “*Assessing Officer” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for “Income-tax”, *ibid.*, with retrospective effect from 1-4-1988.

60. Substituted for “Tax Recovery Commissioners” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

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.

93. Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

⁶¹[**Continuance of certain pending proceedings and power to remove difficulties.**

94. All proceedings for the recovery of tax pending immediately before the coming into force of the amendments to this Schedule by the Direct Tax Laws (Amendment) Act, 1987 shall be continued under this Schedule as amended by that Act from the stage they had reached, and, for this purpose, every certificate issued by the ⁶²[Assessing] Officer under section 222 before such amendment shall be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment, and, if any difficulty arises in continuing the said proceedings, the Board may issue (whether by way of modification, not affecting the substance, of any rule in this Schedule or otherwise) general or special orders which appear to it to be necessary or expedient for the purpose of removing the difficulty.]

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY ⁶³[ASSESSING OFFICER]

⁶⁴[OR TAX RECOVERY OFFICER]

[See section 226(5)]

Distraint and sale.

Where any distraint and sale of movable property are to be effected by any ⁶³[Assessing Officer] ⁶⁴[or Tax Recovery Officer] authorised for the purpose,

⁶¹. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

⁶². Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

⁶³. Substituted for "Income-tax Officer", *ibid.*

⁶⁴. Inserted, *ibid.*, w.e.f. 1-4-1989.

such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.

THE FOURTH SCHEDULE

PART A⁶⁵

Recognised Provident Funds⁶⁶

[See sections 2(38), 10(12), 10(25), 36(1)(iv), ⁶⁷87(1)(d), 111, 192(4)]

Application of Part.

1. This Part shall not apply to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies.

Definitions.

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

- (a) “employer” means any person who maintains a provident fund for the benefit of his or its employees, being—
 - (i) a Hindu undivided family, company, firm or other association of persons, or
 - (ii) an individual engaged in a business or profession the profits and gains whereof are assessable to income-tax under the head “Profits and gains of business or profession”;
- (b) “employee” means an employee participating in a provident fund, but does not include a personal or domestic servant;
- (c) “contribution” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own moneys, to the individual account of an employee, but does not include any sum credited as interest;
- (d) “balance to the credit of an employee” means the total amount to the credit of his individual account in a provident fund at any time;
- (e) “annual accretion”, in relation to the balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;
- (f) “accumulated balance due to an employee” means the balance to his credit, or such portion thereof as may be claimable by him under the

65. See also Circular No. 188, dated 16-1-1976. For details, see Taxmann’s Master Guide to Income-tax Act.

66. See rules 67 to 81 and Form Nos. 40A, 40B, 41 and 42 for form of nomination for recognised provident fund/gratuity fund, form of notice for modification of nomination, form of account of recognised provident fund, and form of appeal, respectively.

67. “88(2)(vi)” should now be substituted for “87(1)(d)”.

regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund;

- (g) “regulations of a fund” means the special body of regulations governing the constitution and administration of a particular provident fund; and
- (h) “salary” includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

According and withdrawal of recognition.

3. (1) The ⁶⁸[Chief Commissioner or Commissioner] may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the ⁶⁸[Chief Commissioner or Commissioner] may fix in accordance with any rules the Board may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the date on which it is made.

(4) An order according recognition to a provident fund shall not, unless the ⁶⁸[Chief Commissioner or Commissioner] otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.

Conditions to be satisfied by recognised provident funds.

4. In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of rule 5, satisfy the conditions set out below and any other conditions which the Board may, by rules, specify—

- (a) all employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India;
- (b) the contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee’s salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee’s individual account in the fund;
- (c) the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee’s individual account at intervals not exceeding one year;

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

- (d) the fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries;
- (e) the fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;
- (f) the employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund :

Provided that in such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest credited in respect of such contributions in accordance with the regulations of the fund and the accumulations thereof;

- (g) the accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund;
- (h) save as provided in clause (g) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

Relaxation of conditions.

5. (1) Notwithstanding anything contained in clause (a) of rule 4, the ⁶⁹[Chief Commissioner or Commissioner] may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent.

(2) Notwithstanding anything contained in clause (b) of rule 4, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (e) or clause (g) of rule 4,—

- (a) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated

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

balance due to the employee to be drawn by him at any time on demand;

(b) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with the preceding clause, the fund may consist also of interest in respect of such accumulated balance;

⁷⁰[(c) the fund may also consist of any amount transferred from the individual account of an employee in any recognised provident fund maintained by his former employer and the interest in respect thereof.]

(4) Subject to any rules⁷¹ which the Board may make in this behalf, the ⁷²[Chief Commissioner or Commissioner] may, in respect of any particular fund, relax the provisions of clause (c) of rule 4,—

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) Notwithstanding anything contained in clause (h) of rule 4, in order to enable an employee to pay the amount of tax assessed on his total income as determined under sub-rule (4) of rule 11, he shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-rule (2) of rule 11 had not been included in his total income.

Employer's annual contributions, when deemed to be income received by employee.

6. That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—

(a) contributions made by the employer in excess of ⁷³[twelve] per cent of the salary of the employee, and

(b) interest credited on the balance to the credit of the employee in so far as it ⁷⁴[***] is allowed at a rate exceeding such rate as may be fixed by

70. Inserted by the Finance Act, 1974, w.e.f. 1-4-1974.

71. See rule 75.

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

73. Substituted for "ten" by the Finance Act, 1997, w.e.f. 1-4-1998.

74. "exceeds one-third of the salary of the employee or" omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax ⁷⁵[***].

⁷⁶[**Exemption for employee's contributions.**

7. An employee participating in a recognised provident fund shall, in respect of his own contributions to his individual account in the fund in the previous year, be entitled to a deduction in the computation of his total income of an amount determined in accordance with ⁷⁷[section 80C].]

Exclusion from total income of accumulated balance.

8. The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

(i) if he has rendered continuous service with his employer for a period of five years or more, or

(ii) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee, ⁷⁸[or]

⁷⁹[(iii) if, on the cessation of his employment, the employee obtains employment with any other employer, to the extent the accumulated balance due and becoming payable to him is transferred to his individual account in any recognised provident fund maintained by such other employer.

Explanation.—Where the accumulated balance due and becoming payable to an employee participating in a recognised provident fund maintained by his employer includes any amount transferred from his individual account in any other recognised provident fund or funds maintained by his former employer or employers, then, in computing the period of continuous service for the purposes of clause (i) or clause (ii) the period or periods for which such employee rendered continuous service under his former employer or employers aforesaid shall be included.]

75. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

76. Substituted, *ibid.*

77. Substituted for "section 80A or, as the case may be, to a deduction from the amount of income-tax with which he is chargeable on his total income of an amount of income-tax determined in accordance with section 87" by the Finance (No.2) Act, 1967, w.e.f. 1-4-1968. Section 80C has now been replaced by section 88.

78. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

79. Inserted, *ibid.*

Tax on accumulated balance.

9. (1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of rule 8 not being applicable, the ⁸⁰[Assessing] Officer shall calculate the total of the various sums of ⁸¹[tax] which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other ⁸¹[tax] for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 becomes payable, an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E of the Indian Income-tax Act, 1922 (11 of 1922), for any assessment year up to and including the assessment year 1932-33, if the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), had come into force on the 15th day of March, 1930, shall be payable by the employee in addition to any other tax payable by him for the previous year in which such balance becomes payable.

Deduction at source of tax payable on accumulated balance.

10. The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that rule and all the provisions of Chapter XVII-B shall apply as if the accumulated balance were income chargeable under the head "Salaries".

Treatment of balance in newly recognised provident fund.

11. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-rule (4) of this rule and sub-rule (5) of rule 5 shall apply thereto.

(3) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the

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

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

accounts of the recognised fund and shall be liable to income-tax ⁸²[***] in accordance with the provisions of this Act, other than this Part.

(4) Subject to such rules as the Board may make in this behalf, the ⁸³[Assessing] Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

Provided that, in cases of serious accounting difficulty, the ⁸⁴[Chief Commissioner or Commissioner] may, subject to the said rules, make a summary calculation of such aggregate.

(5) Nothing in this rule shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee before recognition is accorded, in any manner which may be lawful.

Accounts of recognised provident funds.

12. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by income-tax authorities, and the trustees shall furnish to the ⁸⁵[Assessing] Officer such abstracts thereof as the Board may prescribe.

Appeals.

13. (1) An employer objecting to an order of the ⁸⁶[Chief Commissioner or Commissioner] refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

Treatment of fund transferred by employer to trustee.

14. (1) Where an employer, who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for

82. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

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

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

85. Substituted for "Income-tax", *ibid.*

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

the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 37, incurred in the previous year in which the accumulated balance due to the employee is paid.

⁸⁷**Provisions relating to rules.**

15. (1) In addition to any power conferred by this Part, the Board may make rules—

- (a) prescribing the statements and other information to be submitted along with an application for recognition;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

⁸⁸[(bb) regulating the investment or deposit of the moneys of a recognised provident fund :

Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in Government securities⁸⁹ as defined in section 2 of the Public Debt Act, 1944 (18 of 1944);]

- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;
- (d) determining the extent to and the manner in which exemption from payment of ⁹⁰[tax] may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and
- (e) generally, to carry out the purposes of this Part and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

87. See rules 67 to 81.

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

89. For definition of "Government security", see footnote 43 on p. 1.428 ante.

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

PART B**APPROVED SUPERANNUATION FUNDS⁹¹**

[See sections 2(6), 10(13), 10(25)(iii), 36(1)(iv), ⁹²87(1)(e), 192(5), ⁹³[206]]

Definitions.

1. In this Part, unless the context otherwise requires, “employer”, “employee”, “contribution” and “salary” have, in relation to superannuation funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

Approval and withdrawal of approval.

2. (1) The ⁹⁴[Chief Commissioner or Commissioner] may accord approval to any superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of rule 3, and may at any time withdraw such approval, if, in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The ⁹⁵[Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The ⁹⁵[Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The ⁹⁵[Chief Commissioner or Commissioner] shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

3. In order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

- ⁹⁶(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India;

91. See rules 82 to 97 and Form No. 43 for form of appeal.

92. “88(2)(vii)” should now be substituted for “87(1)(e)”.

93. Substituted for “206(2)” by the Finance Act, 1987, w.e.f. 1-6-1987.

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

95. Substituted for “Commissioner”, *ibid*.

96. See also Circular No. 500, dated 9-12-1987, Circular No. 444, dated 13-12-1985, Circular No. 482, dated 26-3-1987 and Circular No. 595, dated 5-3-1991. For details, see Taxmann’s Master Guide to Income-tax Act.

- (b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons ;
- (c) the employer in the trade or undertaking shall be a contributor to the fund ; and
- (d) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

Application for approval.

4. (1) An application for approval of a superannuation fund or part of a superannuation fund shall be made in writing by the trustees of the fund to the ⁹⁷[Assessing] Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules ⁹⁸[and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made)] for which such accounts have been made up, but the ⁹⁹[Chief Commissioner or Commissioner] may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the ¹[Assessing] Officer mentioned in sub-rule (1), and in default of such communication any approval given shall, unless the ⁹⁹[Chief Commissioner or Commissioner] otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Contributions by employer when deemed to be income of employer.

5. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax ²[***] to be the income of the employer of the previous year in which it is so repaid.

Deduction of tax on contributions paid to an employee.

³6. Where any contributions made by an employer, including interest on contributions, if any, are paid to an employee during his lifetime ⁴[in

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

98. Substituted for "and of the accounts of the fund for the last year" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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

1. Substituted for "Income-tax", *ibid*.

2. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

3. See rule 33 and Form No. 22.

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

circumstances other than those referred to in clause (13) of section 10], ⁵[tax] on the amounts so paid shall be deducted at the average rate of ⁵[tax] at which the employee was liable to ⁵[tax] during the preceding three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Board may direct.

Deduction from pay of and contributions on behalf of employee to be included in return.

7. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under ⁶[***] section 206.

Appeals.

8. (1) An employer objecting to an order of the ⁷[Chief Commissioner or Commissioner] refusing to accord approval to a superannuation fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.⁸

Liability of trustees on cessation of approval.

9. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest on contribution, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Part.

Particulars to be furnished in respect of superannuation funds.

10. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the ⁹[Assessing] Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the ⁹[Assessing] Officer may require.

Provisions relating to rules.

11. (1) In addition to any power conferred by this Part, the Board may make rules—

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

6. "sub-section (1) of" omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

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

8. See rule 97 and Form No. 43.

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

- (a) prescribing the statements and other information to be submitted along with an application for approval ;
- (b) prescribing the returns, statements, particulars, or information which the ¹⁰[Assessing] Officer may require from the trustees of an approved superannuation fund or from the employer ;
- (c) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer ;
- ¹¹[(cc) regulating the investment or deposit of the moneys of an approved superannuation fund :

Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in ¹²Government securities as defined in section 2 of the Public Debt Act, 1944 (18 of 1944) ;]

- (d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund ;
- (e) determining the extent to, and the manner in, which exemption from payment of ¹³[tax] may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn ;
- (f) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder ; and
- (g) generally, to carry out the purposes of this Part and to secure such further control over the approval of the superannuation funds and the administration of approved superannuation funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

PART C

APPROVED GRATUITY FUNDS¹⁴

[See sections 2(5), ¹⁵[10(25)(iv)], 17(1)(iii), 36(1)(v)]

Definitions.

1. In this Part, unless the context otherwise requires “employer”, “employee”, “contribution” and “salary” have, in relation to gratuity funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

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

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

12. For definition of “Government security”, see footnote 43 on p. 1.428 *ante*.

13. Substituted for “income-tax and super-tax” by the Finance Act, 1965, w.e.f. 1-4-1965.

14. See rules 98 to 111 and Form No. 44 for form of appeal.

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

Approval and withdrawal of approval.

2. (1) The ¹⁶[Chief Commissioner or Commissioner] may accord approval to any gratuity fund which, in his opinion, complies with the requirements of rule 3 and may at any time withdraw such approval if, in his opinion, the circumstances of the fund cease to warrant the continuance of the approval.

(2) The ¹⁶[Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect and where the approval is granted subject to conditions, those conditions.

(3) The ¹⁶[Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The ¹⁶[Chief Commissioner or Commissioner] shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

3. In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

- (a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India ;
- (b) the fund shall have for its sole purpose the provision of a gratuity to employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund or to the widows, children or dependants of such employees on their death ;
- (c) the employer in the trade or undertaking shall be a contributor to the fund ; and
- (d) all benefits granted by the fund shall be payable only in India.

Application for approval.

4. (1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the ¹⁷[Assessing] Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules ¹⁸[and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the

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

17. Substituted for "Income-tax", *ibid.*

18. Substituted for "and of the accounts of the fund for the last three years" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made)] for which such accounts have been made up, but the ¹⁹[Chief Commissioner or Commissioner] may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alterations to the ²⁰[Assessing] Officer mentioned in sub-rule (1), and in default of such communication, any approval given shall, unless the ¹⁹[Chief Commissioner or Commissioner] otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Gratuity deemed to be salary.

5. Where any gratuity is paid to an employee during his lifetime, the gratuity shall be treated as salary paid to the employee for the purposes of this Act.

Liability of trustees on cessation of approval.

6. If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee.

Contributions by employer, when deemed to be income of employer.

7. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax ²¹[***] to be the income of the employer of the previous year in which they are so repaid.

Appeals.

8. (1) An employer objecting to an order of the ²²[Chief Commissioner or Commissioner] refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.²³

²⁴[**Particulars to be furnished in respect of gratuity funds.**]

8A. The trustees of an approved gratuity fund and any employer who contributes to an approved gratuity fund shall, when required by notice from the ²⁵[Assessing] Officer, furnish within such period, not being less than twenty-one

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

20. Substituted for "Income-tax", *ibid*.

21. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

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

23. See rule 111 and Form No. 44.

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

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

days from the date of the notice, as may be specified in the notice, such return, statement, particulars or information, as the ²⁶[Assessing] Officer may require.]

Provisions relating to rules.

9. (1) In addition to any power conferred in this Part, the Board may make rules—

- (a) prescribing the statements and other information to be submitted along with an application for approval ;
- (b) limiting the ordinary annual and other contributions of an employer to the fund ;
- ²⁷[(bb) regulating the investment or deposit of the moneys of an approved gratuity fund :
Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in Government securities²⁸ as defined in section 2 of the Public Debt Act, 1944 (18 of 1944) ;]
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or the creation of a charge upon, his beneficial interest in an approved gratuity fund ;
- (d) providing for the withdrawal of the approval in the case of a fund which ceases to satisfy the requirements of this Part or the rules made thereunder ; and
- (e) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

²⁹[**THE FIFTH SCHEDULE**

³⁰[[See section 33(1)(b)(B)(i)]]

LIST OF ARTICLES AND THINGS

- (1) Iron and steel (metal), ferro-alloys and special steels.
- (2) Aluminium, copper, lead and zinc (metals).

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

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

28. For definition of “Government security”, see footnote 43 on p. 1.428 *ante*.

29. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965. The original Schedule was omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

30. Substituted for “[See sections 33(1)(b)(B)(i) and 80B(7)]” by the Finance Act, 1968, w.e.f. 1-4-1969. “[See sections 33(1)(b)(B)(i) and 80B(7)]” was substituted for “[See sections 33(1)(iii)(c), 80E and 85A]” by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and “[See sections 33(1)(iii)(c), 80E and 85A]” was substituted for “[See section 33(1)(iii)(c)]” by the Finance Act, 1966, w.e.f. 1-4-1966.

- (3) ³¹[Coal, lignite, iron ore], bauxite, manganese ore, dolomite, limestone, magnesite and mineral oil.
- (4) Industrial machinery specified under the heading “8. Industrial machinery”, sub-heading “A. Major items of specialised equipment used in specific industries”, of the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951).
- (5) Boilers and steam generating plants, steam engines and turbines and internal combustion engines.
- (6) Flame and drip proof motors.
- (7) Equipment for the generation and transmission of electricity, including transformers, cables and transmission towers.
- (8) Machine tools and precision tools (including their attachments and accessories, cutting tools and small tools), dies and jigs.
- (9) Tractors, earth-moving machinery and agricultural implements.
- (10) Motor trucks and buses.
- (11) Steel castings and forgings and malleable iron and steel castings.
- (12) Cement and refractories.
- (13) Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammonium chloride, superphosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as ammonium phosphates, ammonium sulphate phosphates and ammonium nitro-phosphate.
- (14) Soda ash.
- (15) Pesticides.
- (16) Paper and pulp ³²[including newsprint].
- (17) Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resistors, condensers, coils, magnetic materials and microwave components.
- (18) Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydrocarbons from other sources.
- (19) Ships.
- (20) Automobile ancillaries.
- (21) Seamless tubes.
- (22) Gears.
- (23) Ball, roller and tapered bearings.

31. Substituted for “Iron ore” by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

32. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966 ; but for the purposes of section 33(1), the amendment shall have effect in respect of machinery or plant installed after 31-3-1966.

- (24) Component parts of the articles mentioned in item Nos. (4), (5), (7) and (9), that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in complete finished form and ready for fitment.
- (25) Cotton seed oil.
- ³³[(26) Tea.
- (27) Printing machinery.]
- ³⁴[(28) Processed seeds.
- (29) Processed concentrates for cattle and poultry feed.
- (30) Processed (including frozen) fish and fish products.
- (31) Vegetable oils and oil-cakes manufactured by the solvent extraction process from seeds other than cotton seed.]
- ³⁵[(32) Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.
- (33) Textiles (including those dyed, printed and otherwise processed) made wholly or mainly of jute, including jute twine and jute rope.]]

THE SIXTH SCHEDULE

[Omitted by the Finance Act, 1972, w.e.f. 1-4-1973. Originally, the Schedule was inserted by the Finance Act, 1968, w.e.f. 1-4-1969 and was later amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.]

³⁶***THE SEVENTH SCHEDULE***

[See section 35E]

PART A

MINERALS

1. Aluminium ores.
2. Apatite and phosphatic ores
3. Beryl.
4. Chrome ore.

33. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966; but for the purposes of section 33(1), the amendment shall have effect in respect of machinery or plant installed after 31-3-1966.

34. Inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

35. Inserted by the Finance Act, 1969, w.e.f. 1-4-1970.

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

5. Coal and lignite.
6. Columbite, Samarskite and other minerals of the “rare earths” group.
7. Copper.
8. Gold.
9. Gypsum.
10. Iron ore.
11. Lead.
12. Manganese ore.
13. Molybdenum.
14. Nickel ores.
15. Platinum and other precious metals and their ores.
16. Pitchblende and other uranium ores.
17. Precious stones.
18. Rutile.
19. Silver.
20. Sulphur and its ores.
21. Tin.
22. Tungsten ores.
23. Uraniferous allanite, monazite and other thorium minerals.
24. Uranium bearing tailings left over from ores after extraction of copper and gold, ilmenite and other titanium ores.
25. Vanadium ores.
26. Zinc.
27. Zircon.

PART B

GROUPS OF ASSOCIATED MINERALS

1. Apatite, Beryl, Cassiterite, Columbite, Emerald, Felspar, Lepidolite, Mica, Pitchblende, Quartz, Samarskite, Scheelite, Topaz, Tantalite, Tourmaline.
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, Lithomorge, Titanium, Vanadium, Gallium and Columbium minerals.]

³⁷[**THE EIGHTH SCHEDULE**

[See section 80-IA(2)(iv)(b)]

**LIST OF INDUSTRIALLY BACKWARD STATES
AND UNION TERRITORIES**

- (1) Arunachal Pradesh
- (2) Assam
- (3) Goa
- (4) Himachal Pradesh

37. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994. Prior to its omission, the Eighth Schedule, which was originally inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, later on amended by the Finance Act, 1976, w.e.f. 1-4-1976, and omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, with retrospective effect from 1-4-1984, stood as under :

“[See section 80HH]

List of backward areas

<i>Name of State or Union</i>	<i>Backward areas territory</i>
(1)	(2)
Andhra Pradesh	The districts of Anantpur, Chittoor, Cuddapah, Karimnagar, Khammam, Kurnool, Mahbubnagar, Medak, Nalgonda, Nellore, Nizamabad, Ongole, Srikakulam and Warangal.
Assam	The districts of Cachar, Goalpara, Kamrup, Lakhimpur, Mikir Hills, North Cachar Hills and Nowgong.
Bihar	The districts of Aurangabad, Begusarai, Bhagalpur, Bhojpur, Darbhanga, East Champaran, Gaya, Madhubani, Monghyr, Muzaffarpur, Nalanda, Nawadah, Palamau, Purnea, Saharsa, Samastipur, Santhal Parganas, Saran, Sitamarhi, Siwan, Vaishali and West Champaran.
Gujarat	The districts of Amreli, Banaskantha, Bharuch, Bhavnagar, Junagadh, Kutch, Mehsana, Panch Mahals, Sabar Kantha and Surendranagar.
Haryana	The districts of Bhiwani, Hissar, Jind and Mahendragarh.

(Contd. on p. 1.869)

(5) Jammu and Kashmir

(6) Manipur

(Contd. from p. 1.868)

(1)	(2)
Himachal Pradesh	The districts of Chamba, Hamirpur, Kangra, Kinnaur, Kulu, Lahaul and Spiti, Sirmour, Solan and Una.
Jammu and Kashmir	The districts of Anantnag, Baramula, Doda, Jammu, Kathua, Ladakh, Punch, Rajauri, Srinagar and Udhampur.
Karnataka	The districts of Belgaum, Bidar, Bijapur, Dharwar, Gulbarga, Hassan, Mysore, North Kanara, Raichur, South Kanara and Tumkur.
Kerala	The districts of Alleppey, Cannanore, Malappuram, Trichur and Trivandrum.
Madhya Pradesh	The districts of Balaghat, Bastar, Betul, Bilaspur, Bhind, Chhatrapur, Chindwara, Damoh, Datia, Dewas, Dhar, Guna, Hoshangabad, Jhabua, Khargone, Mandla, Mandsaur, Morena, Narsimhapur, Panna, Raigarh, Raipur, Raisen, Rajgarh, Rajnandgaon, Ratlam, Rewa, Sagar, Sehore, Seoni, Shajapur, Shivpuri, Sidhi, Surguja, Tikamgarh and Vidisha.
Maharashtra	The districts of Aurangabad, Bhandara, Bhir, Buldhana, Chandrapur, Dhulia and Jalgaon; the district of Kolaba excluding such portion thereof as is comprised in the area designated as the site for the proposed new town of New Bombay by Notification No. RPB 1171-18124-IW, dated the 20th March, 1971, issued under sub-section (1) of section 113 of the Maharashtra Regional and Town Planning Act, 1966 (Maharashtra Act 37 of 1966), by the Government of Maharashtra (Urban Development, Public Health and Housing Department) as amended by Notification No. RPB 1173-I-RPC, dated the 16th August, 1973, issued by that Government; the districts of Nanded, Osmanabad, Parbhani, Ratnagiri and Yeotmal.
Manipur	The whole of the State.
Meghalaya	The districts of Garo Hills, Jaintia Hills and Khasi Hills.
Nagaland	The whole of the State.
Orissa	The districts of Balasore, Bolangir, Dhenkanal, Kalahandi, Keonjhar, Koraput, Mayurbhanj and Phulbani.
Punjab	The district of Bhatinda; so much of the district of Faridkot as formed part of the district of Bhatinda on the 31st of July, 1972, the districts of Ferozepur, Gurdaspur, Hoshiarpur and Sangrur.
Rajasthan	The districts of Alwar, Banswara, Barmer, Bhilwara, Churu, Dungarpur, Jaisalmer, Jalor, Jhalawar, Jhunjhunu, Jodhpur, Nagaur, Sikar, Sirohi, Tonk and Udaipur.
Sikkim	The whole of the State.
Tamil Nadu	The districts of Dharmapuri, Kanyakumari, Madurai, North Arcot, Ramanathapuram, South Arcot, Thanjavur and Tiruchirappalli.
Tripura	The whole of the State.
Uttar Pradesh	The districts of Almora, Azamgarh, Bahraich, Ballia, Banda, Barabanki, Basti, Badaun, Bulandshahr, Chamoli, Deoria, Etah, Etawah, Faizabad, Farrukhabad, Fatehpur, Garhwal, Gazipur, Gonda, Hamirpur, Hardoi, Jalaun, Jaunpur, Jhansi, Mainpuri, Mathura, Moradabad, Pilibhit, Pithoragarh, Pratapgarh, Rai Bareilly, Rampur, Shahjahanpur, Sitapur, Sultanpur, Tehri Garhwal, Unnao and Uttarkashi.

(Contd. on p. 1.870)

- (7) Meghalaya
 (8) Mizoram
 (9) Nagaland
 (10) Sikkim
 (11) Tripura
 (12) Andaman and Nicobar Islands
 (13) Dadra and Nagar Haveli
 (14) Daman and Diu
 (15) Lakshadweep
 (16) Pondicherry.]

³⁸**[THE NINTH SCHEDULE**

[Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original Ninth Schedule was inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975.]

(Contd. from p. 1.869)

West Bengal	The districts of Bankura, Birbhum, Burdwan, Cooch Behar, Darjeeling, Hooghly, Jalpaiguri, Malda, Midnapore, Murshidabad, Nadia, Purulia and West Dinajpur.
Andaman and Nicobar Islands	The whole of the Union territory.
Arunachal Pradesh	The whole of the Union territory.
Dadra and Nagar Haveli	The whole of the Union territory.
Goa, Daman and Diu	The whole of the Union territory.
Lakshadweep	The whole of the Union territory.
Mizoram	The whole of the Union territory.
Pondicherry	The whole of the Union territory.

Explanation.—Save as otherwise expressly provided, reference to any district in this Schedule shall be construed,—

- (i) in the case of the districts of Aurangabad, Begusarai, Bhojpur, Gaya, Monghyr, Nalanda and Nawadah in the State of Bihar; the district of Ferozepur in the State of Punjab; and the district of Rampur in the State of Uttar Pradesh, as a reference to the areas comprised in the district concerned on the 15th day of March, 1976, being the date of introduction of the Finance Bill, 1976, in the House of the People; and
- (ii) in the case of any other district, as a reference to the areas comprised in that district on the 3rd day of September, 1973, being the date of introduction of the Direct Taxes (Amendment) Bill, 1973, in the House of People.”

38. Omitted Ninth Schedule, as amended by the Finance Act, 1975, w.e.f. 1-4-1976, the Finance Act, 1976, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, the Finance Act, 1981, w.e.f. 1-4-1982 and the Finance Act, 1984, w.e.f. 1-4-1985, stood as under :

(Contd. on p. 1.871)

(Contd. from p. 1.870)

“[See section 32(1)(iv)]

List of articles or things

1. Iron and steel (metal).
2. Non-ferrous metals.
3. Ferro-alloys and special steels.
4. Steel castings and forgings and alloy, malleable and S.G. iron castings.
5. Thermal and hydro-power generation equipment.
6. Transformers and switch gears.
7. Electric motors.
8. Industrial and agricultural machinery.
9. Earth-moving machinery.
10. Machine tools.
11. Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammonium chloride, superphosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as ammonium phosphates, ammonium sulphate phosphate and ammonium nitrophosphate.
12. Soda ash.
13. Caustic soda.
14. Commercial vehicles.
15. Ships.
16. Aircraft.
17. Tyres and tubes.
18. Paper, pulp and newsprint.
19. Sugar.
20. Vegetable oils.
21. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.
22. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of jute, including jute twine and jute rope.
23. Cement and refractories.
24. Pesticides.
25. Carbon and graphite products.
26. Inorganic heavy chemicals (other than soda ash and caustic soda mentioned in items 12 and 13, respectively).
27. Organic heavy chemicals.
28. Synthetic rubber and rubber chemicals (including carbon black).
29. Industrial explosives.
30. Basic drugs.
31. Industrial sewing machines.
32. Finished leather and leather goods (including footwear made wholly or mainly of leather).
33. Electronic components and raw materials; computers and peripherals; communication equipment; process control, instrumentation, industrial and professional grade electronic equipment.

Explanation.—The article specified in item 24 does not include any formulation of pesticides unless the formulation is prepared by the manufacturer or producer of the basic pesticidal chemicals from which such formulation has been prepared.”

^{38a}[³⁹***THE TENTH SCHEDULE****]

[See section 3(5)]

MODIFICATIONS SUBJECT TO WHICH THE PROVISIONS OF THIS ACT SHALL APPLY IN CASES WHERE THE PREVIOUS YEAR IN RELATION TO THE ASSESSMENT YEAR COMMENCING ON THE 1ST APRIL, 1989, REFERRED TO IN SECTION 3(2), EXCEEDS TWELVE MONTHS

Definitions.

1. *In this Schedule, “transitional previous year” means the period reckoned as the previous year for the assessment year commencing on the 1st day of April, 1989, in the manner specified in sub-section (2) of section 3 and, in a case*

38a. Tenth Schedule shall be omitted by the Finance Act, 1999, w.e.f. **1-4-2000**.

39. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original Tenth Schedule was inserted by the Finance Act, 1975, w.e.f. 1-4-1976 and was later on omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Prior to its omission, the original Tenth Schedule stood as under :

“[See section 40A(8)]

List of institutions and bodies

1. The Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 (15 of 1948).
2. Financial Corporation or Joint Financial Corporations, established under the State Financial Corporations Act, 1951 (63 of 1951), and any institution deemed under section 46 of that Act to be a Financial Corporation established by the State Government for the State within the meaning of that Act.
3. The Shipping Development Fund Committee, constituted under section 15 of the Merchant Shipping Act, 1958 (44 of 1958).
4. The Unit Trust of India, established under the Unit Trust of India Act, 1963 (52 of 1963).
5. The Industrial Development Bank of India, established under the Industrial Development Bank of India Act, 1964 (18 of 1964).
6. State Electricity Boards, constituted under the Electricity (Supply) Act, 1948 (54 of 1948).
7. The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956 (31 of 1956).
8. The Rehabilitation Industries Corporation of India Limited.
9. The State Trading Corporation of India Limited.
10. The Minerals and Metals Trading Corporation of India Limited.
11. The Rural Electrification Corporation Limited.
12. The Agricultural Finance Corporation Limited.
13. The Industrial Reconstruction Corporation of India Limited.
14. The Industrial Credit and Investment Corporation of India Limited.
15. The National Industrial Development Corporation of India Limited.
16. The State Industrial and Investment Corporation of Maharashtra Limited.”

*See rule 125.

where ⁴⁰[the first proviso or the third proviso] to that sub-section applies, the longer or, as the case may be, the longest of the periods reckoned in the manner laid down in ⁴¹[the said first proviso or, as the case may be, the said third proviso].

Special provisions in a case where the transitional previous year is longer than twelve months.

2. In a case where the transitional previous year is longer than twelve months, the provisions of this Act and the Finance Act of the relevant year shall apply subject to the modifications specified in rules 3, 4, 5 and 6 of this Schedule.

⁴²**Modifications pertaining to monetary limits, etc.**

3. The provisions of this Act, specified in column (1) of the Table below shall be subject to the modification that the reference therein to the amount or amounts specified in the corresponding entry in column (2) of the said Table, shall be construed as a reference to the said amount or amounts as increased by multiplying each such amount by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve :

Provided that for the purposes of this rule and rules 5 and 6, where the transitional previous year includes a part of a month, then, if such part is fifteen days or more, it shall be increased to one complete month and if such part is less than fifteen days, it shall be ignored :

⁴³[**Provided further** that the amount of ten thousand rupees, specified in column (2) of the said Table against sub-section (2) of section 48, shall be increased during the transitional previous year only where the long-term capital gain arises as a result of two or more transfers of long-term capital assets and at least one of the said transfers is made during the initial period of twelve months comprised within the transitional previous year and the remaining transfer or transfers is or are made during the period beyond the said period of twelve months comprised within the transitional previous year :

Provided also that where more than one period in respect of different sources of income are included in the transitional previous year under the first proviso or the third proviso to sub-section (2) of section 3, then the amount or amounts specified in column (2) of the said Table shall be increased to such extent and in such manner as the Board may, having regard to,—

- (a) length of the period or periods included in the transitional previous year in respect of different sources of income;
- (b) length of the transitional previous year; and
- (c) other relevant factors;

prescribed in this behalf.]

40. Substituted for “the proviso” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

41. Substituted for “the said proviso”, *ibid.*

42. See rule 125.

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

⁴⁴[TABLE

Provision of the Act	Amount
(1)	(2)
	Rs.
<i>Section 10(3)</i>	5,000
<i>Section 12A(b)</i>	25,000
<i>Section 13(2)(g)</i>	1,000
<i>Section 16(i)</i>	12,000
<i>Section 16(i), proviso</i>	1,000
<i>Section 16(ii)</i>	5,000 and 7,500
<i>Section 23(1)(d)(ii)</i>	3,600
<i>Section 24(2), proviso</i>	5,000
<i>Section 33A(7), proviso</i>	40,000, 35,000 and 30,000
<i>Section 35A</i>	1/14th of the amount of capital expenditure
<i>Section 35AB</i>	1/6th or 1/3rd of the amount paid as lump sum consideration.
<i>Section 35D</i>	1/10th of the amount of certain preliminary expenses.
<i>Section 37(2A)</i>	5,000 and 50,000
<i>Section 40A(12)</i>	10,000
<i>Section 44AA(2)(i) and (ii)</i>	25,000 and 2,50,000
<i>Section 44AB</i>	40,00,000 and 10,00,000
<i>Section 48(2)</i>	10,000
<i>Section 80C(1)</i>	6,000, 9,000 and 12,000
<i>Section 80C(3)</i>	1/10th of the actual capital sum assured
<i>Section 80C(4)</i>	60,000 and 40,000
<i>Section 80C(7)(c)</i>	10,000
<i>Section 80CC(2)</i>	20,000
<i>Section 80CCA(1)</i>	30,000
<i>Section 80D(1)</i>	3,000
<i>Section 80L(1)</i>	7,000 (occurring in two places)
<i>Section 80L(1), 1st proviso</i>	3,000
<i>Section 80L(1), 2nd proviso</i>	3,000
<i>Section 80P(2)(c)</i>	40,000 and 20,000
<i>Section 80P(2)(f)</i>	20,000
<i>Section 80U</i>	15,000
<i>Section 139A(2)</i>	50,000]

⁴⁵[Modification in section 6.

4. Where the transitional previous year comprises a period of eighteen months or more, then *sub-section (1) of section 6 shall be subject to the modification that references therein to the periods of one hundred and eighty-two days, ninety days and sixty days shall be construed as references, respectively, to the

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

45. Substituted, *ibid.*

*Should be clause (1) of section 6.

periods of two hundred and seventy-three days, one hundred and thirty-five days and ninety days.

Modification in respect of depreciation allowance.

5. Where the assessee's income under the head "Profits and gains of business or profession" or under the head "Income from other sources" for a period of thirteen months or more is included in his total income for the transitional previous year, the allowance under clause (ii) of sub-section (1) of section 32 or, as the case may be, under clause (ii) of section 57 in respect of depreciation on block of assets calculated in the manner stated in clause (ii) of sub-section (1) of section 32, shall be increased by multiplying it by a fraction of which the numerator is the number of months in the transitional previous year and the denominator is twelve :

Provided *that where more than one period in respect of income under the head "Profits and gains of business or profession" or under the head "Income from other sources" are included in the transitional previous year under the first proviso or the third proviso to sub-section (2) of section 3, the allowance in respect of depreciation on block of assets shall be calculated separately for each such period included in the transitional previous year in the manner stated in clause (ii) of sub-section (1) of section 32 and increased, where necessary, by multiplying it by a fraction of which the numerator is the number of months in such period (after excluding the number of months relatable to the period in relation to which depreciation on block of assets has been allowed or is allowable in the previous year relevant to the assessment year commencing on the 1st day of April, 1988) and the denominator is twelve.]*

Modification in respect of rate of tax.

6. The tax chargeable on the total income of the transitional previous year shall be calculated at the average rate of tax on the amount obtained by multiplying such total income by a fraction of which the numerator is twelve and the denominator is the number of months in the transitional previous year, as if the resultant amount were the total income:

⁴⁶**[Provided** *that where more than one period in respect of different sources of income are included in the transitional previous year under the first proviso or the third proviso to sub-section (2) of section 3, then the tax shall be chargeable at the average rate of tax, calculated in accordance with the provisions of this rule, on the total income of the transitional previous year after excluding from such total income the income relatable to any such period or periods which has already been included or is includible in the total income of the previous year or previous years relevant to the assessment year commencing on the 1st day of April, 1988.]*

Power of Board to grant relief in case of hardship.

7. The Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship, by general or special order, grant appropriate relief in any case or class of cases where the transitional previous year is longer than twelve months.]

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

⁴⁷[**THE ELEVENTH SCHEDULE**]

[See section 32A, ⁴⁸[section 32AB,] ⁴⁹[section 80CC*(3)(a)(i), section 80-I(2)]
⁵⁰[, section 80J(4)† and section 88A‡ (3)(a)(i)]

LIST OF ARTICLES OR THINGS

1. Beer, wine and other alcoholic spirits.
2. Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.
3. Cosmetics and toilet preparations.
4. Tooth paste, dental cream, tooth powder and soap.
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used.
⁵¹[*Explanation.*—“Blended flavouring concentrates” shall include, and shall be deemed always to have included, synthetic essences in any form.]
6. Confectionery and chocolates.
7. Gramophones, including record-players and gramophone records.
8. ⁵²[***]
9. ⁵³[Projectors]
10. Photographic apparatus and goods.
- 11-21. ⁵²[***]
22. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.
Explanation.—The expression “office machines and apparatus” includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work ⁵⁴[and for data processing (not being computers within the meaning of section 32AB)].
23. Steel furniture, whether made partly or wholly of steel.

47. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

48. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

49. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

50. Substituted for “and section 80J(4)” by the Finance Act, 1990, w.e.f. 1-4-1990. Earlier, these words were inserted by the Finance Act, 1979, w.e.f. 1-4-1979.

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

52. Omitted by the Finance Act, 1981, w.e.f. 1-4-1982.

53. Substituted for “Cinematograph films and projectors” by the Finance Act, 1988, w.e.f. 1-4-1989.

54. Substituted for “, for data processing and for transmission and reception of messages” by the Finance Act, 1987, w.e.f. 1-4-1988.

*Section 80CC has been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1993.

†Section 80J has been omitted, *ibid.*, w.r.e.f. 1-4-1989.

‡Section 88A has been omitted, *ibid.*, w.r.e.f. 1-4-1994.

24. Safes, strong boxes, cash and deed boxes and strong room doors.
25. Latex foam sponge and polyurethane foam.
26. ⁵⁵[***]
27. Crown corks, or other fittings of cork, rubber, polyethylene or any other material.
28. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material.
29. ⁵⁶[***]]

⁵⁷[**THE TWELFTH SCHEDULE**

[See section 80HHC(2)(b)(ii)]

PROCESSED MINERALS AND ORES

- (i) Pulverised or micronised—barytes, calcite, steatite, pyrophyllite, wollastonite, zircon, bentonite, red or yellow oxide, red or yellow ochre, talc, quartz, feldspar, silica powder, garnet, silliminite, fireclay, ballclay, manganese dioxide ore.
- (ii) Processed or activated—bentonite, diatomious earth, fullers earth.
- (iii) Processed—kaoline (china clay), whiting, calcium carbonate.
- (iv) Beneficated—chromite, fluorspar, graphite, vermiculite, ilminite, brown ilminite (lencoxene) rutile, monazite and other mineral concentrates.
- (v) Mica blocks, mica splittings, mica condenser films, mica powder, micanite, silvered mica, punched mica, mica paper, mica tapes, mica flakes.
- (vi) Exfoliated—vermiculite, calcined kyanite, magnesite, calcined magnesite, calcined alumina.
- (vii) Sized iron ore processed by mechanical screening or crushing and screening through dry process or mechanical crushing, screening, washing and classification through wet process.
- (viii) Iron ore concentrates processed through crushing, grinding or magnetic separation.
- (ix) Agglomerated iron ore.
- (x) Cut and polished minerals and rocks including cut and polished granite.

Explanation.—For the purposes of this Schedule, “processed”, in relation to any mineral or ore, means—

55. Omitted by the Finance Act, 1981, w.e.f. 1-4-1982.

56. Omitted, *ibid.*

57. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier the Twelfth Schedule was inserted by the Finance Act, 1982, w.e.f. 1-4-1983 and omitted by the Finance Act, 1986, w.e.f. 1-4-1987.

- (a) dressing through mechanical means to obtain concentrates after removal of gangue and unwanted deleterious substances or through other means without altering the minerological identity;
- (b) pulverisation, calcination or micronisation;
- (c) agglomeration from fines;
- (d) cutting and polishing;
- (e) washing and levigation;
- (f) benefication by mechanical crushing and screening through dry process;
- (g) sizing by crushing, screening, washing and classification through wet process;
- (h) other upgrading techniques such as removal of impurities through chemical treatment, refining by gravity separation, bleaching, floatation or filtration.]

APPENDIX ONE

**TEXT OF REMAINING PROVISIONS
OF ALLIED ACTS REFERRED TO
IN INCOME-TAX ACT**

SECTION 2 OF COMPANIES ACT, 1956

Definitions.

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

**

**

**

(13) “director” includes any person occupying the position of director, by whatever name called ;

**

**

**

(24) “manager” means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not ;

(25) “managing agent” means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or body corporate occupying the position of a managing agent, by whatever name called.

Explanation I : For the purposes of this Act, references to “managing agent” shall be construed as references to any individual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II : For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969 (17 of 1969), this clause shall remain, and shall be deemed always to have remained, in force ;

**

**

**

SECTION 3 OF COMPANIES ACT, 1956

Definitions of “company”, “existing company”, “private company” and “public company”.

3. (1) In this Act, unless the context otherwise requires, the expressions “company”, “existing company”, “private company” and “public company”, shall, subject to the provisions of sub-section (2), have the meanings specified below :—

(i) “company” means a company formed and registered under this Act or an existing company as defined in clause (ii) ;

(ii) “existing company” means a company formed and registered under any of the previous companies laws specified below :—

- (a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act ;
- (b) the Indian Companies Act, 1866 (10 of 1866) ;
- (c) the Indian Companies Act, 1882 (6 of 1882) ;
- (d) the Indian Companies Act, 1913 (7 of 1913) ;
- (e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942) ; and
- (f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force—
 - (1) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913) ; or
 - (2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, insofar as other corporations are concerned ; and
- (g) the Portuguese Commercial Code, insofar as it relates to “*sociedades anonimas*” ;
- (iii) “private company” means a company which, by its articles,—
 - (a) restricts the right to transfer its shares, if any ;
 - (b) limits the number of its members to fifty not including—
 - (i) persons who are in the employment of the company ; and
 - (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased ; and
 - (c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company :

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member ;
- (iv) “public company” means a company which is not a private company.

(2) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in clauses (i) to (iv) of sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India :—

- (a) a company the registered office whereof is in Burma, Aden or Pakistan and which immediately before the separation of that country from India was a company as defined in clause (i) of sub-section (1) ;
- (b) **

SECTION 4A OF COMPANIES ACT, 1956

Public financial institutions.

4A. (1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely :—

- (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913) ;
- (ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948) ;

- (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964) ;
 - (iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) ;
 - (v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).
 - (vi) the infrastructure Development Finance Company Limited, a company formed and registered under this Act.
- (2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution :

Provided that no institution shall be so specified unless—

- (i) it has been established or constituted by or under any Central Act, or
- (ii) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government.

NOTIFIED INSTITUTIONS UNDER SECTION 4A(2) OF COMPANIES ACT, 1956

In exercise of the powers conferred by sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956), the Central Government hereby specifies the following institutions to be public financial institutions, namely :—

(1) The Industrial Reconstruction Corporation of India established under the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984); (2) The General Insurance Corporation of India established under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972); (3) The National Insurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (4) The New India Assurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (5) The Oriental Fire and General Insurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (6) The United Fire and General Insurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (7) [* * *]; (8) Tourism Finance Corporation of India Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (9) Risk Capital and Technology Finance Corporation Ltd., formed and registered under the Companies Act, 1956 (1 of 1956); (10) Technology Development and Information Company of India Limited, formed and Registered under the Companies Act, 1956 (1 of 1956); (11) Power Finance Corporation Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (12) National Housing Bank established under the National Housing Bank Act, 1987 (53 of 1987); (13) Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989 (39 of 1989); (14) Rural Electrification Corporation Ltd., formed and registered under the Companies Act, 1956 (1 of 1956); (15) Indian Railway Finance Corpn. Ltd.; (16) Industrial Finance Corporation of India Ltd. formed and registered under the Companies Act, 1956; (17) Andhra Pradesh State Financial Corporation; (18) Assam Financial Corporation; (19) Bihar State Financial Corporation; (20) Delhi Financial Corporation; (21) Gujarat State Financial Corporation; (22) Haryana Financial Corporation; (23) Himachal Pradesh Financial Corporation; (24) Jammu & Kashmir State Financial Corporation; (25) Karnataka State Financial Corporation; (26) Kerala Financial Corporation; (27) Madhya Pradesh Financial Corporation; (28) Maharashtra State Financial Corporation; (29) Orissa State Financial Corporation; (30) Punjab Financial Corporation; (31) Rajasthan Financial Corporation; (32) Tamilnadu Industrial Development Corporation Limited; (33) Uttar Pradesh Financial Corporation; (34) West Bengal Financial Corporation; (35) Indian Renewable Energy Development Agency Ltd.; (36) North Eastern Development Finance Corpn. Ltd.; (37) Housing & Urban Development Corpn. Ltd.

Source : Notification No. SO 1329, dated 13-5-1978, as amended by SO 2901, dated 9-10-1987; SO 7(E), dated 3-1-1990; SO 238(E), dated 20-3-1990; SO 674(E), dated 31-8-1990; SO 321(E), dated 12-4-1990; SO 484(E), dated 26-7-1991; SO 812(E), dated 2-12-1991; SO 128(E), dated 11-2-1992; SO 765(E), dated 8-10-1993; SO 98(E), dated 15-2-1995; SO 247(E), dated 28-3-1995; SO 843(E), dated 17-10-1995, SO 529(E), dated 23-7-1996 and SO 837(E), dated 9-12-1996.

SECTION 25 OF COMPANIES ACT, 1956**Power to dispense with “Limited” in name of charitable or other company.**

25. (1) Where it is proved to the satisfaction of the Central Government that an association—

- (a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and
- (b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word “Limited” or the words “Private Limited”.

(2) The association may thereupon be registered accordingly ; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

(3) Where it is proved to the satisfaction of the Central Government—

- (a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1), and
- (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word “Limited” or the words “Private Limited”; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.

(6) It shall not be necessary for a body to which a licence is so granted to use the word “Limited” or the words “Private Limited” as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word “Limited” or the words “Private Limited” at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section :

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8)(a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a).

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words “Chamber of Commerce”, that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and—

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section ; and

(b) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

SECTION 200 OF COMPANIES ACT, 1956

Prohibition of tax-free payments.

200. (1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

Explanation.—In this sub-section, the expression “tax” comprises any kind of income-tax including super-tax.

(2) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company’s articles, or in any contract made with the company, or in any resolution passed by the company in general meeting or by the company’s Board of directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section (1), such provision shall have effect during the residue of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(3) This section shall not apply to any remuneration—

(a) which fell due before the commencement of this Act, or

(b) which may fall due after the commencement of this Act, in respect of any period before such commencement.

SECTION 205(1) OF COMPANIES ACT, 1956

Dividend to be paid only out of profits.

205. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for

depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government :

Provided that—

- (a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years ;
- (b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both ;
- (c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation :

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960.

**

**

**

SECTION 226(2) OF COMPANIES ACT, 1956

Qualifications and disqualifications of auditors.

226. (1) **

**

**

(2)(a) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (b), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951) or of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), as the case may be, entitling him to act as an auditor of companies in the territories which, immediately before the 1st November, 1956, were comprised in that State or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in India.

(b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in the territories which, immediately before the 1st November, 1956, were comprised in Part B States for the purpose of clause (a), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.

SECTION 233B OF COMPANIES ACT, 1956

Audit of cost accounts in certain cases.

233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be

conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) :

Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959), are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a chartered accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.

(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government :

Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.

(5)(a) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(b) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(c) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (a) or clause (b) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual

general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

SECTION 391 OF COMPANIES ACT

Power to compromise or make arrangements with creditors and members.

391. (1) Where a compromise or arrangement is proposed—

- (a) between a company and its creditors or any class of them; or
- (b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company :

Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application.

SECTION 392 OF COMPANIES ACT**Power of High Court to enforce compromises and arrangements.**

392. (1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

- (a) shall have power to supervise the carrying out of the compromise or arrangement; and
- (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement.

SECTION 393 OF COMPANIES ACT**Information as to compromises or arrangements with creditors and members.**

393. (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391,—

- (a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect, and in particular, stating any material interests of the directors, managing director, managing agent, secretaries and treasurers or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and
- (b) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, managing agent, secretaries and treasurers, manager or trustees for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, managing agent, secretaries and treasurers or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

SECTION 394 OF COMPANIES ACT

Provisions for facilitating reconstruction and amalgamation of companies.

394. (1) Where an application is made to the Court under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court—

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and
- (b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a “transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”);

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters :

- (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liability of any transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (iv) the dissolution, without winding up, of any transferor company;
- (v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest :

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and

in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) In this section—

- (a) “property” includes property, rights and powers of every description; and “liabilities” includes duties of every description; and
- (b) “transferee company” does not include any company other than a company within the meaning of this Act; but “transferor company” includes any body corporate, whether a company within the meaning of this Act or not.

SECTION 620A OF COMPANIES ACT, 1956

Power to modify Act in its application to Nidhis, etc.

620A. (1) In this section, “Nidhi” or “Mutual Benefit Society” means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

- (a) shall not apply to any *Nidhi* or Mutual Benefit Society, or
- (b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

NOTIFIED NIDHIS/MUTUAL BENEFIT SOCIETIES UNDER SECTION 620A OF COMPANIES ACT, 1956

In exercise of the powers conferred by section 620A of the Companies Act, 1956 (1 of 1956), the Central Government hereby—

- (i) declares the companies specified in Schedules I and II annexed hereto as *nidhis* and mutual benefit societies respectively ; and
- (ii) directs that the provisions of the said Act specified in column (1) of Schedule III annexed hereto shall not apply or, as the case may be, shall apply with the exceptions modifications and adaptations specified in the corresponding entry in column (2) thereof, to such *nidhis* and mutual benefit societies.

SCHEDULE I : NIDHIS

1. Adambakkam Janopakara Saswatha Nidhi Ltd., Madras
2. Alandur Praja Sahaya Saswatha Nidhi Ltd., Madras
3. Bhuvanagiri Hindu Saswatha Paropakara Nidhi Ltd., Madras
4. Chennai Sri Andal Dhanasekara Saswatha Nidhi Ltd., Madras
5. Chennai Sri Ekambareswarar Saswatha Nidhi Ltd., Madras
6. Chidambaram Hindu Saswatha Jananukula Nidhi Ltd., Madras
7. Chingleput Dhanasekara Nidhi Ltd., Madras
8. Choolai Janopakara Nidhi Ltd., Madras
9. Conjeevaram Hodsonpet Dhanasekara Nidhi Ltd., Madras
10. Cuddalore Permanent Fund Ltd., Madras

11. Egmore Benefit Society Third Branch Ltd., Madras
12. Kumbakonam Mutual Benefit Fund Ltd., Madras
13. Madras Catholic Permanent Fund Ltd., Madras
14. Madras Christian Benefit Fund Ltd., Madras
15. Madras Mutual Benefit Permanent Fund Ltd., Madras
16. Madras Purasawalkam Hindu Janopakara Saswatha Nidhi or the Permanent General Benefit Fund Ltd., Madras
17. Madura Hindu Permanent Fund Ltd., Madras
18. Muthialpet Benefit Fund Ltd., Madras
19. Mylapore Hindu Permanent Fund Ltd., Madras
20. Nagapatnam Permanent Fund Ltd., Madras
21. Nugambakkam Saswatha Dhanna Raksha Nidhi Ltd., Madras
22. Pudupakkam Permanent Fund Ltd., Madras
23. Puraswalkam Dhana Vardhana Saswatha Nidhi Ltd., Madras
24. Purasawalkam Hindu Santhatha Sanga Nidhi 1st Branch Ltd., Madras
25. Puraswalkam Permanent Fund Ltd., Madras
26. Paraspara Sahaya Nidhi (Perambur) Ltd., Madras
27. Shiali Janopakara Nidhi Ltd., Madras
28. Sivagana Shri Meenakshi Swadeshi Saswatha Nidhi Ltd., Madras
29. Shri Villiputhur Permanent Fund Ltd., Madras
30. Sunrise Corporation Ltd., Madras
31. Thiyagarayanagar Fund Ltd., Madras
32. Tinnelvely District Permanent Fund Ltd., Madras
33. Tiruvatteeswaran Hindu Janopakara Nidhi Ltd., Madras
34. Triplicate Permanent Fund Ltd., Madras
35. Trivellore Janopakara Saswatha Nidhi Ltd., Madras
36. Villupuram People's Mutual Benefit Society Ltd., Madras
37. Abiramapuram Fund Ltd., Madras
38. Arcot Dhana Sekara Nidhi Ltd., Madras
39. Arcot Tiruvalluvar Nidhi Ltd., Madras
40. Saraswathi Vilasam Shanmugananda Nidhi Ltd., Madras
41. Thirumagal Mutual Benefit Fund Ltd., Madras
42. Varalakshmi (Fund) (Vellore) Ltd., Madras
43. Vellore Saswatha Nidhi Ltd., Madras
44. Walajabad Dhanasekara Saswatha Nidhi Ltd., Madras
45. Chittoor Saswatha Nidhi Ltd., Andhra Pradesh
46. Madanapalle Sri Venkateswara Nidhi Ltd., Andhra Pradesh
47. Anantapur Sri Satyanarayana Nidhi Ltd., Andhra Pradesh
48. Nellore Permanent Fund Ltd., Andhra Pradesh
49. Adoni Arya Vaisya Fund Ltd., Andhra Pradesh
50. Dharamavaram Mutual Benefit Permanent Fund, Andhra Pradesh
51. Anantapur National Fund Ltd., Andhra Pradesh
52. Hindupur Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
53. Madakasira Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
54. Penukonda Maruthi Benefit Permanent Fund Ltd., Andhra Pradesh
55. Bangalore Cantonment Permanent Fund Ltd., Mysore

56. Harapanahallai Sree Venkataramanaswamy Permanent Bhandar Ltd., Mysore
57. Ballary Brucepettah Hindu Mutual Benefit Permanent Fund Ltd., Mysore
58. Hospet Ryots Agro-Industrial Corporation Ltd., Mysore
59. Anantapur Sree Vasavamba Permanent Fund Ltd., Andhra Pradesh
60. Shri Vasavi Parmeswari Permanent Fund Ltd., Madras
61. Kuries & Trades Ltd., Ernakulam
62. Saidapet Saswatha Nidhi Ltd., Madras
63. Shree Rajagopaul Benefit Fund Ltd., Madras
64. The Madras Chromepet Permanent Fund Ltd., Madras
65. The Adoni Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
66. Sriman Madhva Sidhanta Permanent Nidhi Ltd.
67. Thirumylai Saswatha Sahaya Nidhi Ltd.
68. Taheri Aid Fund Ltd.
69. Kumbakonam Diocesan Catholics Permanent Fund Ltd.
70. Matha Vara Nidhi Ltd.
71. Amritsar Radhasaomi Finance Co. (P.) Ltd.
72. Nambalam Benefit Society Ltd.
73. Makkal Nala Abivirthi Nidhi Ltd.
74. Kilpank Benefit Society Ltd.
75. Samarasa Mutual Benefit Fund Ltd.
76. Chromepet Saswatha Nidhi Ltd.
77. Sri Raja Raja Cholan Mutual Benefit Fund Ltd.
78. Palghat Permanent Fund Ltd.
79. Grama Nala Saswatha Nidhi Ltd.
80. Kondan Mutual Benefit Fund Ltd.
81. Sri Saithai Mutual Benefit Fund Ltd.
82. Mini Mutual Benefit Fund Ltd.
83. Annanagar Janopakara Nidhi Ltd.
84. Dhanalakshmi Fund (India) Ltd.
85. Aminjikai Benefit Fund Ltd., Madras
- 86.
87. Jawahar Nagar Nidhi (Madras) Ltd.
88. Shenoy Nagar Saswatha Nidhi Ltd., Madras
- 89.
- 90.
91. Kayanat Permanent Fund Ltd.
92. Piravom Funds Ltd.
93. Chennapuri Mutual Benefit Fund Ltd.
94. Chetpet Saswatha Nidhi Ltd.
95. Royapettah Benefit Fund Ltd.
96. Shenoy Nagar Benefit Fund Ltd.
97. Kalaimagal Mutual Benefit Fund Ltd.
98. Mini Muthoottu Mutual Fund Ltd.
99. Dravidian Benefit Fund Ltd.
100. Ashoknagar Janopakara Saswatha Nidhi Ltd.
- 101.
102. St. Mary's Finance Ltd.

103. Tamilnadu Viswakarma Mutual Benefit Fund Ltd.
104. Shree Ambika Nidhi Ltd.
105. West Mambalam Permanent Fund Ltd.
106. Al-Falah Mutual Benefits Ltd.
107. Manipal Sowbhagya Nidhi Ltd.
108. Jayalakshmi Mutual Benefits Fund Ltd.
109. Kodam Bakkam Benefits Fund Ltd.
- 110.
111. Park Town Benefit Fund Ltd.
- 112.
- 113.
- 114.
115. Kanchi Mutual Benefit Fund Ltd.
116. Thirumangalam Janopakara Permanent Fund Ltd.
117. St. Mary's Fund Ltd.
118. Sreevari Benefit Society Ltd.
119. Gillnagar Benefit Fund Ltd.
120. Kerala Permanent Fund Ltd.
121. Pammal Makkal Nala Fund Ltd.
122. Pondicherry Mutual Benefit Fund Ltd.
123. Bliss Benefit Fund Ltd.
132. Alwarpet Benefit Fund Limited, Madras.
133. Al-Najib Milli Mutual Benefit Funds Limited, Uttar Pradesh.
134. Nirappukattil Mutual Funds Limited, Kerala.
135. Mannady Permanent Fund Limited.
136. Virudhunagar Benefit Fund Limited.
137. Sri Akilakrishna Benefit Society Limited.
138. South East Benefit Fund Limited, Madras.
139. Rasi Nidhi Limited, Coimbatore.
140. Sri Kandaswamy Permanent Fund Ltd., Madras.
141. Sri Padmanabha Permanent Fund Ltd., Madras.
- 142.
143. Subam Benefit Fund Ltd., Tamil Nadu
144. Saibala Benefit Fund Ltd., Tamil Nadu.
145. Thulansi Krishna Permanent Fund Ltd., Madras.
146. Indian Members Benefit Fund Ltd., Madras.
147. Nanganallur Permanent Fund Ltd., Madras.
148. Peravallur Permanent Fund Ltd., Madras.
149. Ayodhya Benefit Fund Ltd., Madras.
150. Self Growth Nidhi Ltd., Bangalore.
151. Shri Samundeswari Benefit Fund Ltd.
152. ICS Benefit Fund Ltd.
153. Shri Navrathana Benefit Fund Ltd.
154. Sullivan Garden Benefit Fund Ltd.
155. Shabab Islamic Investment and Mutual Benefits (India) Limited, Lucknow.
156. Venkatesapuram Benefit Fund Limited, Madras.

157. Canara Nidhi Limited, Manipal.
158. SMP Mutual Benefit Limited, Haldwani, Uttar Pradesh.
159. Trywell Finance Mutual Benefit Company Limited, New Delhi.
160. The Hasnapuram Mutual Benefit Permanent Fund Limited, Madras.
161. Manappuram Benefit Fund Limited, Trissur.
162. Galaxy Mutual Benefit Company Limited, Lucknow.
163. Alagendran Benefit Fund Limited, Madras.
- 164.
- to
- 171.
172. Devta Mutual Benefits Limited, Meerut.
173. Sanjeevarayan Benefit Fund Limited, Madras.
174. Manali Benefit Fund Limited, Madras.
175. Eldico Mutual Benefit Company Limited, Lucknow.
176. Sidhartha Mutual Benefit Fund Limited, New Delhi.
177. Pallavan Mutual Benefit Fund Limited, Madras.
178. Devidas Finance Limited, Puttur.
179. Thiru-Vi-Ka Nagar Benefit Fund Limited, Madras.
180. Kumari Benefit Fund Limited, Madras.
181. Vellavedu Benefit Fund Limited, Vellavedu, Tamil Nadu.
182. Promptekk Benefit Fund Limited, Madras.
183. Sarvajana Benefit Fund Limited, Madras.
184. Sri Muthukumaraswamy Permanent Fund Limited, Madras.
185. Perfect Benefit Fund Limited, Madras.
186. Trichy Rockcity Benefit Fund Limited, Trichy, Tamil Nadu.
187. Vedaranium Benefit Fund Limited, Vedaranium, Tamil Nadu.
188. Crystal India Mutual Benefits Limited, District Nainital, Uttar Pradesh.
189. Gowthami Permanent Fund Limited, Kakinada, Andhra Pradesh.
190. Kaveripatnam Benefit Fund Limited, Dharmapuri, Tamil Nadu.
191. Shri Shanthi Nath Benefit Fund Limited, Vallupuram, Tamil Nadu.
192. Veejay Benefit Fund Limited, Madras.

SCHEDULE II : MUTUAL BENEFIT SOCIETIES

Every “mutual insurance company” as defined in clause (a) of sub-section (1) of section 95 of the Insurance Act, 1938 (4 of 1938).

PARTS II & III OF SCHEDULE VI OF COMPANIES ACT, 1956

SCHEDULE VI

PART II

REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 210 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.
2. The profit and loss account—
 - (a) shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and

(b) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.

3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account:

- (i) (a) The turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company, and indicating the quantities of such sales for each class separately.
- (b) Commission paid to sole selling agents within the meaning of section 294 of the Act.
- (c) Commission paid to other selling agents.
- (d) Brokerage and discount on sales, other than the usual trade discount.
- (ii) (a) In the case of manufacturing companies,—
 - (1) The value of the raw materials consumed, giving item-wise break-up and indicating the quantities thereof. In this break-up, as far as possible, all important basic raw materials shall be shown as separate items. The intermediates or components procured from other manufacturers may, if their list is too large to be included in the break-up, be grouped under suitable headings without mentioning the quantities, provided all those items which in value individually account for 10% or more of the total value of the raw material consumed shall be shown as separate and distinct items with quantities thereof in the break-up.
 - (2) The opening and closing stocks of goods produced, giving break-up in respect of each class of goods and indicating the quantities thereof.
- (b) In the case of trading companies, the purchases made and the opening and closing stocks, giving break-up in respect of each class of goods traded in by the company and indicating the quantities thereof.
- (c) In the case of companies rendering or supplying services, the gross income derived from services rendered or supplied.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if the total amounts are shown in respect of the opening and closing stocks, purchases, sales and consumption of raw material with value and quantitative break-up and the gross income from services rendered is shown.
- (e) In the case of other companies, the gross income derived under different heads.

Note 1: The quantities of raw materials, purchases, stocks and the turnover, shall be expressed in quantitative denominations in which these are normally purchased or sold in the market.

Note 2 : For the purpose of items (ii)(a), (ii)(b) and (ii)(d), the items for which the company is holding separate industrial licences, shall be treated as separate classes of goods, but where a company has more than one industrial licence for production of the same item at different places or for expansion of the licensed capacity, the item covered by all such licences shall be treated as one class. In the case of trading companies, the imported items shall be classified in accordance with the classification adopted by the Chief Controller of Imports and Exports in granting the import licences.

Note 3 : In giving the break-up of purchases, stocks and turnover, items like spare parts and accessories, the list of which is too large to be included in the break-up, may be grouped under suitable headings without quantities, provided all those items, which in value individually account for 10% or more

of the total value of the purchases, stocks, or turnover, as the case may be, are shown as separate and distinct items with quantities thereof in the break-up.

(iii) In the case of all concerns having works-in-progress, the amounts for which such works have been completed at the commencement and at the end of the accounting period.

(iv) The amount provided for depreciation, renewals or diminution in value of fixed assets.

If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated and the quantum of arrears of depreciation computed in accordance with section 205(2) of the Act shall be disclosed by way of a note.

(v) The amount of interest on the company's debentures and other fixed loans, that is to say, loans for fixed periods, stating separately the amount of interest, if any, paid or payable to the managing director, the managing agent, the secretaries and treasurers and the manager, if any.

(vi) The amount of charge for Indian income-tax and other Indian taxation on profits, including, where practicable, with Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing, where practicable, between income-tax and other taxation.

(vii) The amounts reserved for—

(a) repayment of share capital; and

(b) repayment of loans.

(viii) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance sheet is made up.

(b) The aggregate, if material, of any amounts withdrawn from such reserves.

(ix) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.

(b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(x) Expenditure incurred on each of the following items, separately for each item:—

(a) Consumption of stores and spare parts.

(b) Power and fuel.

(c) Rent.

(d) Repairs to buildings.

(e) Repairs to machinery.

(f) (1) Salaries, wages and bonus.

(2) Contribution to provident and other funds.

(3) Workmen and staff welfare expenses to the extent not adjusted from any previous provision or reserve.

Note 1 : Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

Note 2 **

**

**

(g) Insurance.

(h) Rates and taxes, excluding taxes on income.

(i) Miscellaneous expenses:

Provided that any item under which the expenses exceed 1 per cent of the total revenue of the company or Rs. 5,000, whichever is higher, shall be shown as a separate and distinct item against an appropriate account head in the Profit and Loss Account and shall not be combined with any other item to be shown under 'Miscellaneous expenses'.

- (xi) (a) The amount of income from investments, distinguishing between trade investments and other investments.
- (b) Other income by way of interest, specifying the nature of the income.
- (c) The amount of income-tax deducted if the gross income is stated under subparagraphs (a) and (b) above.
- (xii) (a) Profits or losses on investments showing distinctly the extent of the profits or losses earned or incurred on account of membership of a partnership firm to the extent not adjusted from any previous provision or reserve.
Note : Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.
- (b) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.
- (c) Miscellaneous income.
- (xiii) (a) Dividends from subsidiary companies.
- (b) Provisions for losses of subsidiary companies.
- (xiv) The aggregate amount of the dividends paid, and proposed, and stating whether such amounts are subject to deduction of income-tax or not.
- (xv) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.

4. The profit and loss account shall also contain or give by way of a note detailed information, showing separately the following payments provided or made during the financial year to the directors (including managing directors) the managing agents, secretaries and treasurers or manager, if any, by the company, the subsidiaries of the company and any other person:—

- (i) managerial remuneration under section 198 of the Act paid or payable during the financial year to the directors (including managing directors), the managing agent, secretaries and treasurers or manager, if any;
- (ii) expenses reimbursed to the managing agent under section 354;
- (iii) commission or other remuneration payable separately to a managing agent or his associate under sections 356, 357 and 358;
- (iv) commission received or receivable under section 359 of the Act by the managing agent or his associate as selling or buying agent of other concerns in respect of contracts entered into by such concerns with the company;
- (v) the money value of the contracts for the sale or purchase of goods and materials or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year;
- (vi) other allowances and commission including guarantee commission (details to be given);
- (vii) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);
- (viii) pensions, etc.,—
 - (a) pensions,
 - (b) gratuities,

- (c) payments from provident funds, in excess of own subscriptions and interest thereon,
- (d) compensation for loss of office,
- (e) consideration in connection with retirement from office.

4A. The profit and loss account shall contain or give by way of a note a statement showing the computation of net profits in accordance with section 349 of the Act with relevant details of the calculation of the commissions payable by way of percentage of such profits to the directors (including managing directors), the managing agents, secretaries and treasurers or manager (if any).

4B. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, whether as fees, expenses or otherwise for services rendered—

- (a) as auditor;
- (b) as adviser, or in any other capacity, in respect of—
 - (i) taxation matters;
 - (ii) company law matters;
 - (iii) management services; and
- (c) in any other manner.

4C. In the case of manufacturing companies, the profit and loss account shall also contain, by way of a note in respect of each class of goods manufactured, detailed quantitative information in regard to the following, namely:—

- (a) the licensed capacity (where licence is in force);
- (b) the installed capacity; and
- (c) the actual production.

Note 1 : The licensed capacity and installed capacity of the company as on the last date of the year to which the profit and loss account relates, shall be mentioned against items (a) and (b) above, respectively.

Note 2 : Against item (c), the actual production in respect of the finished products meant for sale shall be mentioned. In cases where semi-processed products are also sold by the company, separate details thereof shall be given.

Note 3 : For the purposes of this paragraph, the items for which the company is holding separate industrial licences shall be treated as separate classes of goods but where a company has more than one industrial licence for production of the same item at different places or for expansion of the licensed capacity, the item covered by all such licences shall be treated as one class.

4D. The profit and loss account shall also contain by way of a note the following information, namely:—

- (a) value of imports calculated on C.I.F. basis by the company during the financial year in respect of:—
 - (i) raw materials;
 - (ii) components and spare parts;
 - (iii) capital goods;
- (b) expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;
- (c) value of all imported raw materials, spare parts and components consumed during the financial year and the value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;
- (d) the amount remitted during the year in foreign currencies on account of dividends, with a specific mention of the number of non-resident shareholders,

the number of shares held by them on which the dividends were due and the year to which the dividends related;

- (e) earnings in foreign exchange classified under the following heads, namely:—
- (i) export of goods calculated on F.O.B. basis;
 - (ii) royalty, know-how, professional and consultation fees;
 - (iii) interest and dividend;
 - (iv) other income, indicating the nature thereof.

5. The Central Government may direct that a company shall not be obliged to show the amount set aside to provisions other than those relating to depreciation, renewal or diminution in value of assets, if the Central Government is satisfied that the information should not be disclosed in the public interest and would prejudice the company, but subject to the condition that in any heading stating an amount arrived at after taking into account the amount set aside as such, the provision shall be so framed or marked as to indicate that fact.

6. (1) Except in the case of the first profit and loss account laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account shall also be given in the profit and loss account.

(2) The requirement in sub-clause (1) shall, in the case of companies preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which entered on the corresponding date of the previous year.

PART III

INTERPRETATION

7. (1) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires,—

- (a) the expression “provision” shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
- (b) the expression “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability ;
- (c) the expression “capital reserve” shall not include any amount regarded as free for distribution through the profit and loss account; and the expression “revenue reserve” shall mean any reserve other than a capital reserve;

and in this sub-clause the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or
- (b) any amount retained by way of providing for any known liability;

is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

8. For the purposes aforesaid, the expression “quoted investment” means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, and the expression “unquoted investment” shall be construed accordingly.

ARTICLE 276(2) OF CONSTITUTION OF INDIA

276. (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.

EIGHTH SCHEDULE TO THE CONSTITUTION OF INDIA

[Articles 344(1) and 351]

Languages.

- | | |
|---------------|---------------|
| 1. Assamese. | 10. Marathi. |
| 2. Bengali. | 11. Nepali. |
| 3. Gujarati. | 12. Oriya. |
| 4. Hindi. | 13. Punjabi. |
| 5. Kannada. | 14. Sanskrit. |
| 6. Kashmiri. | 15. Sindhi. |
| 7. Konkani. | 16. Tamil. |
| 8. Malayalam. | 17. Telugu. |
| 9. Manipuri. | 18. Urdu. |

SECTION 50 OF CUSTOMS ACT, 1962**Entry of goods for exportation.**

50. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

SECTION 360 OF CODE OF CRIMINAL PROCEDURE, 1973**Order to release on probation of good conduct or after admonition.**

360. (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he

thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

SECTION 2(1)(a), (e) AND (l) OF DEPOSITORIES ACT, 1996

Definitions.

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

(a) “beneficial owner” means a person whose name is recorded as such with a depository;

**

**

**

(e) “depository” means a company formed and registered under the Companies Act, 1956 (1 of 1956), and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

**

**

**

(l) “security” means such security as may be specified by the Board;

**

**

**

SECTION 21 OF INDIAN PENAL CODE, 1860

“Public servant”

21. The words “public servant” denote a person falling under any of the descriptions hereinafter following, namely:—

**

**

**

Second - Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third - Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth - Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth - Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh - Every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth - Every person—

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

SECTION 2 OF INDUSTRIAL DISPUTES ACT, 1947

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- ** ** **
- (g) “employer” means—
- (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;
- ** ** **
- (s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

SECTION 11B OF INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Power of Central Government to specify the requirements which shall be complied with by the small scale industrial undertakings.

11B. (1) The Central Government may, with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment under this Act to enable them to maintain their viability and strength so as to be effective in:

- (a) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and
- (b) securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,
- specify, having regard to the factors mentioned in sub-section (2) by notified order, the requirements which shall be complied with by an industrial undertaking to enable it to

be regarded, for the purposes of this Act, as an ancillary, or a small scale industrial undertaking and different requirements may be so specified for different purposes or with respect to industrial undertakings engaged in the manufacture or production of different articles:

Provided that no industrial undertaking shall be regarded as an ancillary industrial undertaking unless it is, or is proposed to be, engaged in :—

- (i) the manufacture of parts, components, sub-assemblies, toolings or intermediates; or
 - (ii) rendering of services, or supplying or rendering, not more than fifty per cent of its production or its total services, as the case may be, to other units for production of other articles.
- (2) The factors referred to in sub-section (1) are the following, namely :—
- (a) the investment by the industrial undertaking in:—
 - (i) plant and machinery, or
 - (ii) land, buildings, plant and machinery;
 - (b) the nature of ownership of the industrial undertaking;
 - (c) the smallness of the number of workers employed in the industrial undertaking;
 - (d) the nature, cost and quality of the product of the industrial undertaking ;
 - (e) foreign exchange, if any, required for the import of any plant or machinery by the industrial undertaking; and
 - (f) such other relevant factors as may be prescribed.

(3) A copy of every notified order proposed to be made under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the proposed notified order or both Houses agree in making any modification in the proposed notified order, the notified order shall not be made or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses.

(4) Notwithstanding anything contained in sub-section (1), an industrial undertaking which, according to the law for the time being in force, fell, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984, under the definition of an ancillary, or small scale industrial undertaking, shall, after such commencement, continue to be regarded as an ancillary, or small scale industrial undertaking for the purposes of this Act until the definition aforesaid is altered or superseded by any notified order made under sub-section (1).

REQUIREMENTS TO BE COMPLIED WITH BY INDUSTRIAL UNDERTAKINGS FOR BEING REGARDED AS SMALL SCALE/ANCILLARY INDUSTRIES

SO 857(E), DATED 10-12-1997 - Whereas the Central Government considers it necessary with a view to ascertain which ancillary and small scale industrial undertakings need supportive measures, exemption or other favourable treatment under the Industries (Development and Regulation) Act, 1951 (65 of 1951) (hereinafter referred to as the said Act) to enable them to maintain their viability and strength so as to be effective in—

- (a) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and

(b) securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

And whereas the draft notification was laid before each House of Parliament for a period of thirty days as required under sub-section (3) of section 11B of the said Act;

And whereas no modification in the proposed notification has been suggested by both the Houses of Parliament;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11B and sub-section (1) of section 29B of the said Act, and in supersession of the Notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 232(E), dated the 2nd April, 1991, the Central Government hereby specifies the following factors on the basis of which an industrial undertaking shall be regarded as a small scale or as an ancillary industrial undertaking for the purposes of the said Act :—

(1) *Small scale industrial undertaking* - An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire-purchase, does not exceed rupees three crores.

(2) *Ancillary industrial undertaking* - An industrial undertaking which is engaged or is proposed to be engaged in the manufacturing or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and undertaking supplies or proposes to supply or renders not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire-purchase, does not exceed rupees three crores.

Note 1 - No small scale or ancillary industrial undertaking referred to above shall be subsidiary of, or owned or controlled by any other industrial undertaking.

Explanation - For the purposes of this note,—

(A) “owned” shall have the meaning as derived from the definition of the expression “owner” specified in clause (f) of section 3 of the said Act;

(B) “subsidiary” shall have the same meaning as in clause (47) of section 2, read with section 4, of the Companies Act, 1956 (1 of 1956);

(C) the expression “controlled by any other industrial undertaking” means as under :—

(i) where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings,

(ii) where two or more industrial undertakings are set up as partnership firms under the Indian Partnership Act, 1932 (1 of 1932) and one or more partners are common partner or partners in such firms, each such undertaking shall be considered to be controlled by the other undertaking or undertakings,

(iii) where industrial undertakings are set up by companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if,—

(a) the equity holding by other industrial undertaking in it exceeds twenty-four per cent of its total equity; or

(b) the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first-mentioned undertaking being also the Managing Director or Director in the other industrial undertaking or the majority of Directors on the Board of the first-mentioned undertaking being the equity holders in the other industrial undertaking in terms of the provisions of the following items (a) and (b) of sub-clause (iv);

- (iv) the extent of equity participation by other industrial undertaking or undertakings in the undertaking as per sub-clause (iii) above shall be worked out as follows :—
- (a) the equity participation by other industrial undertaking shall include both foreign and domestic equity;
 - (b) equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings;
 - (c) equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings;
- (v) where an industrial undertaking is a subsidiary of, or is owned or controlled by, any other industrial undertaking or undertakings in terms of sub-clause (i), (ii) or (iii) and if the total investment in fixed assets in plant and machinery of the first-mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified in paragraph (1) or (2) of this notification as the case may be, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking.

Note 2 - (a) In calculating the value of plant and machinery for the purposes of paragraphs (1) and (2) of this notification, the original price thereof, irrespective of whether the plant and machinery are new or second-hand, shall be taken into account.

(b) In calculating the value of plant and machinery, the following shall be excluded, namely :—

- (i) the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
- (ii) the cost of installation of plant and machinery;
- (iii) the cost of research and development equipment and pollution control equipment;
- (iv) the cost of generation sets and extra transformer installed by the undertaking as per the regulations of the State Electricity Board;
- (v) the bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
- (vi) the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures;
- (vii) the cost of gas producer plants;
- (viii) transportation charges (excluding of sales-tax and excise) for indigenous machinery from the place of manufacturing to the site of the factory;
- (ix) charges paid for technical know-how for erection of plant and machinery;
- (x) cost of such storage tanks which store raw materials, finished products only and are not linked with the manufacturing process; and

(xi) cost of fire-fighting equipments.

(c) In the case of imported machinery, the following shall be included in calculating the value, namely :—

- (i) import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port);
- (ii) the shipping charges;
- (iii) customs clearance charges; and
- (iv) sales tax.

Every industrial undertaking which has been issued a certificate of registration under section 10 of the said Act or a license under sections 11, 11A and 13 of the said Act by the Central Government and are covered by the provisions of paragraphs (1) and (2) above relating to the ancillary or small scale industrial undertaking, may be registered, at the discretion of the owner, as such, within a period of one hundred and eighty days from the date of publication of this notification in the Official Gazette.

This notification shall come into force from the date of its publication in the Official Gazette.

SECTION 14 OF INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Procedure for the grant of licence or permission.

14. Before granting any licence or permission under section 11, section 11A, section 13 or section 29B, the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigations in respect of applications received in this behalf, and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed.

SECTION 43 OF LIFE INSURANCE CORPORATION ACT, 1956

Application of the Insurance Act.

43. (1) The following sections of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely:—

Sections 2, 2B, 3, 18, 26, 33, 38, 39, 41, 45, 46, 47A, 50, 51, 52, 110A, 110B, 110C, 119, 121, 122 and 123.

(2) The Central Government shall as soon as may be after the commencement of this Act, by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely:—

Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A.

(3) The Central Government may, by notification in the Official Gazette direct that all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub-section (2), shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification.

(4) Every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

(5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation.

SECTION 4 OF PAYMENT OF GRATUITY ACT, 1972

Payment of gratuity.

4. (1) ** ** **

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed ¹*three lakhs and fifty thousand rupees.*

** ** **

SECTION 53A OF TRANSFER OF PROPERTY ACT

Part performance.

53A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights or a transferee for consideration who has no notice of the contract or of the part performance thereof.

SECTION 3(1)(ga) OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Definitions.

3. (1) In this Act, unless the context otherwise requires,—

** ** **

1. *Vide* Payment of Gratuity (Amendment) Act, 1998, w.r.e.f. 24-9-1997.

(ga) “net worth” means the sum total of the paid-up capital and free reserves.

Explanation.—For the purposes of this clause, “free reserves” means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation.

SECTION 17 OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Powers of Board to make suitable order on the completion of inquiry.

17. (1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time.

(2) If the Board decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, the Board, shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses.

(3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Board may,—

- (a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);
- (b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

SECTION 18 OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Preparation and sanction of schemes.

18. (1) Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely :—

- (a) the financial reconstruction of the sick industrial company;
- (b) the proper management of the sick industrial company by change in, or take over of, the management of the sick industrial company;
- (c) the amalgamation of—
 - (i) the sick industrial company with any other company, or

- (ii) any other company with the sick industrial company;
 - (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as “transferee company”);
 - (d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;
 - (da) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;
 - (e) such other preventive, ameliorative and remedial measures as may be appropriate;
 - (f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e).
- (2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely :—
- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;
 - (b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;
 - (c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
 - (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
 - (e) the continuation by, or against, the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 17;
 - (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;
 - (g) the allotment to the shareholders of the sick industrial company of shares in the sick industrial company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—
 - (i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or
 - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
 - (h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

- (i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;
- (j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;
- (k) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;
- (l) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;
- (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (a) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify;

(b) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies :

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company.

(4) The scheme shall thereafter be sanctioned, as soon as may be, by the board (hereinafter referred to as the "sanctioned scheme") and shall come into force on such date as the Board may specify in this behalf :

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned

scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.

(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency or otherwise, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.

(11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956 (1 of 1956).

(12) The Board may monitor periodically the implementation of the sanctioned scheme.

AN ANALYSIS OF RELEVANT RULES OF INCOME-TAX RULES

SECTION 2(1A)/RULES 7 AND 8: INCOME WHICH IS PARTIALLY AGRICULTURAL AND PARTIALLY FROM BUSINESS : COMPUTATION OF

Rule 7 provides that for disintegrating a composite business income which is partially agricultural and partially non-agricultural, the 'market value' of any agricultural produce, raised by the assessee or received by him as rent in kind and utilised as raw material in his business, is deducted. No further deduction is permissible in respect of any expenditure incurred by the assessee as cultivator or receiver of rent-in-kind.

Where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the market value will be the value calculated according to the average price at which it has been so sold during the relevant previous year.

Where agricultural produce is not ordinarily sold in the market in its raw state or after application to it of any process aforesaid, the market value will be the aggregate of—

- (i) the expenses of cultivation;
- (ii) the land revenue or rent paid for the area in which it was grown; and
- (iii) such amount as the Assessing Officer finds, having regard to all the circumstances in each case to represent a reasonable profit.

Rule 8 provides that the income in respect of the business of growing tea leaves and manufacturing tea is computed under the Act as if it were derived from business, after making permissible deductions. 40 per cent of the income so arrived at is treated as business income and the balance 60 per cent is treated as agricultural income.

In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned. However, for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (30) of section 10, is not includible in the total income.

SECTIONS 9 AND 92/RULES 10 AND 11 : INCOME IN CASE OF NON-RESIDENTS/DETERMINATION OF INCOME FROM TRANSACTIONS WITH NON-RESIDENTS : COMPUTATION OF

Where actual amount of income accruing or arising to any non-resident person, whether directly or indirectly:

- through or from any business connection in India; or
- through or from any property in India; or
- through or from any asset/source of income in India; or
- through or from any money lent at interest and brought into India;

is, according to Assessing Officer, not definitely ascertainable, the amount of such income can be calculated in either of the following manner:

- A percentage of turnover so accruing or arising as the Assessing Officer may consider to be reasonable; or
 - An amount which bears the same proportion to the total profits and gains of business of such person, as the receipts so accruing or arising bear to the total receipt of the business; or
 - An amount calculated in the manner which Assessing Officer may deem suitable.
- Profits and gains derived from any business carried on in the manner referred to in section 92 may also be determined in the manner indicated above.

Before, invoking any of the three methods mentioned above, the Assessing Officer has to be satisfied that the assessee does not have the required material or even otherwise the real or actual amount of income is not ascertainable. If the actual income can be calculated by making some adjustments to income disclosed in the accounts maintained in respect of Indian income, rule 10 cannot be applied.

Rule 10(i) - Relevant material for working out 'reasonable percentage' has to be provided by the assessee. Some of the relevant factors which Assessing Officer should take into account while applying the 'reasonable percentage' are : nature of business; rate of net profit made by non-resident in business; usual rate of profit in that line of businesses; type of business operation carried on in India, etc.

Rule 10(ii) - Rule 10(ii) is applicable only if income is from business. Following steps need be taken:

- Compute total world income of non-resident assessee from business in accordance with provisions of Indian Income-tax Laws.
- Determine the proportion between the receipts accruing or arising within the taxable territories and total world receipt of business.
- Determine profits or gains of business by application of that proportion for the purposes of assessment to income-tax.

The income so determined will be taxable without any further allowances.

SECTION 10(14)/RULE 2BB: PRESCRIBED ALLOWANCES WHICH ARE EXEMPT UPTO PRESCRIBED LIMITS

Section 10(14) grants exemption on special allowances and benefits. Clause (14) is divided into two parts.

(1) Under sub-clause (i) of clause (14) of section 10, any *prescribed* special allowance or benefit, other than those in the nature of a perquisite, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, is exempt to the extent to which such expenses are actually incurred for that purpose. The allowances prescribed for this purpose (which are fully exempt) are spelt out in rule 2BB(1). These allowances are as follows:

- Any allowance granted to meet the cost of travel on tour or on transfer, including any sum paid in connection with transfer, packing and transportation of personal effects on such transfer.
- Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.
- Any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit, provided that free conveyance is not provided by the employer.
- Any allowance granted to meet the expenditure incurred on a helper, where such helper is engaged for the performance of duties of an office or employment of profit.

■ Any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions.

■ Any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit.

(2) Under sub-clause (ii) of section 10(14), any *prescribed* allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, is exempt *upto the prescribed extent*. Rule 2BB(2) enumerates these allowances and the limits upto which they are exempt. These allowances are as follows :

<i>Name of allowance/places where exempt</i>	<i>Extent of exemption</i>
(i) Any special compensatory allowance in the nature of Composite Hill Compensatory Allowance or High Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance—	
(i) At places mentioned under Item I in Col. 3 of Sl. No. 1 of the Table in rule 2BB(2)	Rs. 600 per month
(ii) Siachen area of Jammu and Kashmir	Rs. 1,200 per month
(iii) All other places situated at a height of 1,000 metres or more above sea level	Rs. 150 per month
(ii) Any special compensatory allowance in the nature of Border Area Allowance or Remote Area Allowance or Difficult Area Allowance or Disturbed Area Allowance—	
(a) At places mentioned under Item I in Col. 3 of 2 of the Table in rule 2BB(2)	Rs. 650 per month Sl.No.
(b) Installations in the Continental Shelf of India and the Exclusive Economic Zone of India	Rs. 1,100 per month
(c) At places mentioned in Item III in Col. 3 of 2 of the Table in rule 2BB(2)	Rs. 525 per month Sl.No.
(d) At places mentioned in Item IV in Col. 3 of 2 of the Table in rule 2BB(2)	Rs. 375 per month Sl.No.
(e) Jog Falls in Shimoga District in Karnataka	Rs. 300 per month
(f) At places mentioned in Item VI in Col. 3 of 2 of the Table in rule 2BB(2)	Rs. 100 per month Sl.No.
(iii) Tribal Area Allowances in States mentioned in Col. 3 of Sl. No. 3 of Table in rule 2BB(2)	Rs. 100 per month
(iv) Any allowance granted to an employee working in transport system to meet his personal expenditure his duty performed in the course of running of such transport from one place to another place, provided that such employee is not in receipt of daily allowance (whole of India)	70 per cent of such a n y allowance upto a during maximum of Rs. 3,000 per month
(v) Children educational allowance (whole of India)	Rs. 50 per month per child upto a maximum of two children
(vi) Any allowance granted to an employee to meet the expenditure on his child (whole of India)	Rs. 150 per month per host el child, upto a maximum of two children
(vii) Compensatory Field Area Allowance, at places mentioned in Col. 3 of Sl. No. 7 of Table in rule 2BB(2)	Rs. 975 per month

<i>Government employees</i>	<i>Value of perquisite</i>
e. a company [other than a corporation referred to in (b) and (c) above] in which not less than 40 per cent of the shares are held (whether singly or taken together) by the Government or Reserve Bank of India, provided the employee is a retired Government Officer or a Government Officer on deputation.	

As an exception to this general rule, in the cases cited above where the perquisite is to be valued at 10 per cent of the salary, if the employee is of the opinion that the fair rental value of the accommodation provided to him is less than 10 per cent of his salary, he can make a claim before the Assessing Officer at the assessment stage or through his return of income that the fair rental value may be adopted as the value of the perquisite.

<i>Other employees, i.e., Private sector Employees</i>	<i>Value of the perquisite</i>	
	<i>Accommodation situated in Bombay, Calcutta, Delhi or Madras</i>	<i>Accommodation situated in other places</i>
<ul style="list-style-type: none"> ■ Fair rental value is less than 10 per cent of the salary of the employee ■ Fair rental value is 10 per cent of salary or more but not more than 60 per cent of the salary of the employee ■ Fair rental value is more than 60 per cent of the salary of the employee ■ Fair rental value is 10 per cent of salary or more but not more than 50 per cent of the salary of the employee ■ Fair rental value is more than 50 per cent of the salary of the employee 	<p>Fair rental value</p> <p>10 per cent of the salary of the employee</p> <p>Fair rental value <i>minus</i> 50 per cent of the salary of the employee</p> <p>Not applicable</p> <p>Not applicable</p>	<p>Fair rental value</p> <p>Not applicable</p> <p>Not applicable</p> <p>10 per cent of the salary of the employee</p> <p>Fair rental value <i>minus</i> 40 per cent of the salary of the employee</p>

WHAT IS FAIR RENTAL VALUE

Fair rental value is the rent which a similar accommodation would fetch in the same locality, or the municipal valuation of the accommodation, whichever is higher.

Where accommodation is subject to the Rent Control Act, the fair rental value as determined above, cannot exceed the standard rent determined (or determinable even if not fixed) under the Rent Control Act.

Where the accommodation is owned by the employer, expenses incurred by the employer on maintenance of garden attached to the accommodation (inclusive of salary of gardener), will also to be taken into account - *See* Circular No. 122, dated 19-10-1973.

However, if such accommodation is not owned by the employer and the employer provides facility of gardener, etc., to the employee, salary paid to gardener will not enter into the computation of fair rental value, but will be taken as perquisite in employee's hands.

WHAT IS 'SALARY'

The items to be included and excluded in the computation of 'salary' are as follows :

<i>Items to be included</i>	<i>Items to be excluded</i>
Basic pay	Dearness allowance, if it is not taken into account for computing retirement benefits, or if it does not form part of salary according to terms of employment.
Dearness allowance, if the terms of employment so provides	Employer's contribution to provident fund
Other allowances which are not exempt from tax	Other allowances which are exempt from tax
Bonus or commission or fees	Entertainment allowance, to the extent deduction is admissible thereon
Taxes borne by the employer ¹	Value of perquisites
Electricity/gas/water expenses paid or reimbursed by the employer to his employee. ²	

While computing salary for the purpose of valuation of perquisite in respect of rent-free accommodation, salary, bonus, etc., are included on 'due' basis. Again it may be noted that salary of the period during which rent-free accommodation is not occupied by the employee, will not be considered.

ADDITIONS TO BE MADE IF THE ACCOMMODATION IS FURNISHED

The value of the perquisite calculated as above will represent the value for unfurnished accommodation only. Where the accommodation is furnished by the employer (*i.e.*, by way of sofa sets, cots, dining table, T.V. set, radio, refrigerators and other household appliances) the value of the perquisite computed as if it is an unfurnished accommodation should be increased to the following extent:

- Where the furnishings are owned by the employer 10 per cent per annum of the original cost of the furnishings
- Where the furnishings are taken on hire by the employer Hire charges borne by the employer.

PROVISION OF ACCOMMODATION AT CONCESSIONAL RENT

Where the employer provides residential accommodation to an employee at a concessional rent, the value of the perquisite should first be calculated as if the residential accommodation is provided rent-free. From the value so arrived at, the rent actually paid by the assessee should be deducted, so as to arrive at the value of taxable perquisite.

1. *CIT v. I.G. Mackintosh* [1975] 99 ITR 419 (Mad.)/*CIT v. H.D. Dennis* [1981] 7 Taxman 231 (Bom.)/CBDT Circular Letter No. [F. No. 35/50/65-IT(B), dated 27-4-1966].
 2. *See CIT v. C.W. Steel (No. 2)* [1976] 86 ITR 821 (Ker.).

PROVISION OF SWEEPER/GARDENER/WATCHMAN

Under rule 3(ba), inserted with effect from 2-6-1995, the benefit to the assessee resulting from the provision by the employer of free services of a sweeper, a gardener or a watchman shall be valued at Rs. 120 per month per person.

CAR PROVIDED BY EMPLOYER TO EMPLOYEE

CAR OWNED OR HIRED BY EMPLOYER

<i>Maintenance and running charges met by</i>	<i>Value of the perquisite</i>		
	<i>Car used wholly for private purposes by employee</i>	<i>Car used partly for official and partly for private purposes by employee</i>	<i>Car used solely for official purposes</i>
Employee	Value of normal wear and tear of the car or hire charges, <i>plus</i> , if chauffeur is provided at employer's expense, remuneration paid to chauffeur	Proportionate value of normal wear and tear or hire charges (as well as chauffeur's remuneration). If determination of such value presents difficulties, at the following rates: Small car : Rs. 200 p.m. Big car : Rs. 300 p.m. Chauffeur : Rs. 300 p.m.	<i>Nil</i>
Employer	Expenditure incurred by employer for maintenance and running of car <i>plus</i> value of normal wear and tear or hire charges (as the case may be) <i>plus</i> remuneration paid to chauffeur	Reasonable proportion of sum actually spent by employer for maintenance and running, value of normal wear and tear or hire charges (as well as chauffeur's remuneration). If determination on this basis presents difficulties, at the following rates: Small car : Rs. 600 p.m. Big car : Rs. 800 p.m. Chauffeur : Rs. 300 p.m.	<i>Nil</i>

Notes :

1. 'Small car' is one whose h.p. rating does not exceed 16. 'Big car' is one whose h.p. rating/engine capacity exceeds 16 h.p.
2. 'Month' means a completed month according to the English calendar, any part of the month should be ignored.
3. Where no particular car is placed at the disposal of the employee but he is allowed to use one or more cars out of a pool of cars, and any of such cars is a 'Big car', valuation will be on basis of 'Big car'.
4. User of employer's vehicle for purposes of going from his residence to place where duties of employment are to be performed or from such place back to his residence cannot be taken as user for private purposes and will not be a taxable perquisite.
5. Conveyance facility provided to Judges of High Courts/Supreme Court is exempt from tax.

CAR OWNED BY EMPLOYEE

Taxability will be on the following basis :

	<i>Value of perquisite</i>
<ul style="list-style-type: none"> ■ Where car expenses are met by 	<i>Nil</i> employee
<ul style="list-style-type: none"> ■ Where maintenance and running expenses are met by employer : <ul style="list-style-type: none"> - If car is used wholly for official purposes - If car is used wholly for private purposes - If car is partly used for official purposes and partly for private purposes 	<i>Nil</i> poses Actual expenditure incurred by employer A reasonable proportion of sum actually incurred by employer which in Assessing Officer's opinion can reasonably be attributed to use of car for private purposes.

PROVISION OF CAR AT A CONCESSIONAL RATE

In some cases, the employer may provide the amenity of a car to the employee, but recover some amount from the employee at a fixed rate to cover the cost of the personal use of the car. In such cases, the value of the perquisite should first be determined as if the amenity has been allowed free of cost, and from the amount so arrived at, the amount recovered from the employee should be deducted, so as to arrive at the taxable value of the perquisite.

PROVISION OF CONVEYANCE OTHER THAN CAR

The value of the perquisite in cases where the employer provides any conveyance other than a car to an employee will be determined as so much of the sum actually expended by the employer on the maintenance and running of the conveyance (where the conveyance is owned by the employer, the value of the normal wear and tear of the vehicle should also be added) which, in the opinion of the Assessing Officer can reasonably be attributed to the user by the assessee for purposes other than in the performance of the duties.

FREE SUPPLY OF GAS, ELECTRICITY OR WATER FOR HOUSEHOLD CONSUMPTION

If the employer arranges free supply of gas, electric energy or water for household consumption by the employer, the value of the perquisite will be determined as follows:

- Where such supply is made from resources owned by the employer without purchasing them from any other outside agency (like supply of electric energy by an Electricity Board to its employees) *Nil*
- Where supply is made by purchasing them from outside agencies :
 - If the items are for private use by the employee Amount paid by employer to the supplying agency
 - If the Assessing Officer is satisfied that the items are consumed by the employee also for the purpose of his official duties Amount paid by employer to the supplying agency or 6¼ per cent of the salary of the employee, *whichever is less*

'Salary' for above purposes will include basic pay, dearness allowance (if terms of contract of employment so provides) and commission¹.

FREE EDUCATION

Taxability of this perquisite will be as under :

1. *Gestetner Duplicators (P.) Ltd. v. CIT* [1979] 117 ITR 1 (SC).

	<i>Value of perquisite</i>
<ul style="list-style-type: none"> ■ Amount spent by employer for training/educating employee ■ Fixed allowance paid to employee ■ Reimbursement of school fees or other educational expenses ■ Education facilities to employee's family members in an institution maintained by employer 	<p><i>Nil</i></p> <p>Exempt to the extent of Rs. 50 per child per month (maximum of two children)*</p> <p>Sum so paid</p> <p>Reasonable cost of education in a similar institution in or near the locality.</p>

***Note :** Any allowance granted to an employee to meet hostel expenditure of his child is exempt from tax to the extent of Rs. 150 per month per child for a maximum of two children.

FREE TRANSPORT

The basis of valuation of such a perquisite is as given below:

- Transport facility provided by a transport undertaking engaged in carriage of goods or passengers to any employee and dependent family members of the employee (including dependent relatives), either, free of charge or at concessional rate, is not taxable provided conveyance used for this purpose is owned by the employer. Accordingly, the facility of granting privilege passes and privilege tickets to the railway employees and similar facility made available to the employees of Air India and Indian Airlines, is not taxable.
- In other cases, the actual amount spent by an employer is taxable, under section 17(2)(iii) as a perquisite.

ANY OTHER BENEFITS

The value of any other benefit not discussed above shall be determined on such basis as the Assessing Officer considers fair and reasonable.

SECTION 32/RULE 5(2): DEPRECIATION: PRESCRIBED CONDITIONS FOR CLAIMING HIGHER RATE OF DEPRECIATION

Normal rate of depreciation in case of plant and machinery is 25%. However, if the following conditions are satisfied, then plant and machinery shall be treated as a part of block of assets qualifying for depreciation at the rate of 40 per cent (50 per cent for the assessment years 1988-89 to 1991-92) by virtue of rule 5(2):

- New machinery or plant is installed during the previous year relevant to the assessment year 1988-89 (or any subsequent year), for the purposes of business of manufacture or production of any article or thing (not being any article specified in the Eleventh Schedule).
- Such article or thing is manufactured or produced by using any technology (including any process) or other know-how developed in, or is an article or thing invented in, a laboratory owned or financed by the Government or a laboratory owned by a public sector company or a University or an institution recognised in this behalf by the Secretary, Department of Scientific and Industrial Research, Government of India.
- The right to use such technology (including any process) or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner.
- The return, furnished by the assessee for any previous year in which the said machinery or plant is acquired, shall be accompanied by a certificate from the Secretary, Department of Scientific and Industrial Research, Government of India, to the effect that such article or thing is manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory.

**SECTION 40A(3)/RULE 6DD: BUSINESS DISALLOWANCE - CASH PAYMENTS EXCEEDING
PRESCRIBED LIMIT - PRESCRIBED CASES & CIRCUMSTANCES
IN WHICH PAYMENT IN SUM EXCEEDING - PRESCRIBED LIMIT
MAY BE MADE OTHERWISE THAN BY CHEQUE**

Under section 40A(3), as amended with effect from 1-4-1996, any payment made by an assessee for a sum exceeding Rs. 20,000 will qualify for deduction in full, only if such payment is made by means of a crossed cheque or by a crossed bank draft. If such a payment is made through any other means, twenty per cent of such payment will not be allowed as a deduction. Prior to 1-4-1996, this sub-section provided for a total ban on deduction of the entire amount, if payment was made otherwise than by way of crossed cheque or crossed bank draft. However, rule 6DD(j), as it stood then, provided for a general exception, in cases where the assessee satisfied the assessing authority that payment could not be made through crossed cheque/draft, (i) due to exceptional or unavoidable circumstances, or (ii) due to impracticability of making payment in the prescribed manner, or (iii) due to genuine hardship that such payment would cause to the payee. This clause (j) in rule 6DD has since been omitted with effect from 25-7-1995 and new clauses (j) to (l) are inserted in rule 6DD with effect from 1-12-1995. Henceforth the flat disallowance of 20 per cent of the amount will operate without any exception, in all situations other than those specifically excluded in rule 6DD. Under this rule, (as it stands after amendment by Twenty-first Amendment Rules, with effect from 1-12-1995), no disallowance under section 40A(3) will be made where payment is made in the following cases/circumstances:

1. Where payment is made to banking and other credit institutions like RBI/SBI/Scheduled Banks/Commercial Banks in public and private sector/LIC/UTI/ICICI/IFCI/IDBI/Co-operative bank or land mortgage bank/Primary agricultural credit society/Primary credit society/Madras Industrial Investment Corporation Ltd., Madras/Andhra Pradesh Industrial Development Corporation Ltd., Hyderabad/Kerala State Industrial Development Corporation Ltd., Trivandrum/State Industrial and Investment Corporation of Maharashtra Ltd., Bombay/Public State Industrial Development Corporation Ltd., Chandigarh/National Industrial Development Corporation Ltd., New Delhi/Mysore State Industrial Investment and Development Corporation Ltd., Bangalore/Haryana State Industrial Development Corporation Ltd., Chandigarh/State Financial Corporation.
2. Payments to Central and State Governments, if the rules framed by such a Government provides for payment in legal tender, such as payment of direct taxes, customs or excise duties, sales tax, railway freight, etc. Thus, in case of payments made to railways on account of railway freight charges or for booking wagons, section 40A(3) will not apply - See Circular No. 34, dated 5-3-1970.
3. Payments made by book adjustment by an assessee in the account of payee against money due to assessee for any goods supplied or services rendered by him to payee.
4. Payments through the banking system, like letters of credit, mail transfers, telegraphic transfers, book adjustment in the same bank or between one bank and another, and bills of exchange including hundies made payable to a bank.
5. Payments to a cultivator, grower or producer towards purchase of agricultural or forest produce or produce of animal husbandry (including hides and skins) or dairy or poultry farming or fish or fish products or products of horticulture or apiculture, whether processed or not.
6. Payments to a producer towards purchase of his products if they are manufactured or processed without the aid of power in a cottage industry.

7. Payments made to a person who ordinarily resides or carries on business in a village which is not served by any bank. However, if payment is made to such a villager in a town having banking facilities, the exception will not operate.
8. Payments of terminal benefits like gratuity/retrenchment compensation, etc., to employees drawing salary not exceeding Rs. 7,500 per annum.
9. Salary paid to an employee (after deducting tax at source under section 192) when such employee is temporarily posted for a continuance period of 15 days or more in a place other than his normal place of duty or on a ship, and he does not maintain any account in any bank at such place or ship.
10. Payments required to be made on a day on which the banks are closed either on account of holiday or strike.
11. Payment made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.

SECTION 44AA/RULE 6F : BOOKS OF ACCOUNTS TO BE MAINTAINED BY PROFESSIONALS : PRESCRIBED BOOKS OF ACCOUNT

Section 44AA requires compulsory maintenance of accounts by assessee carrying on specified professions/non-specified professions or business.

Specified professions - Specified professions include the following professions :

- Medical, *i.e.*, doctors, surgeons, etc.
- Legal, *i.e.*, Advocates, Tax Practitioners, etc.
- Engineering, *i.e.*, Engineers, etc.
- Architectural, *i.e.*, Architects, etc.
- Accountancy, *i.e.*, Chartered Accountants, etc.
- Technical Consultancy
- Interior Decoration
- Authorised representative

‘Authorised representative’ means a person, who represents any other person, on payment of any fee or remuneration, before any Tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy.

- Film artist

‘Film artist’ means any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as—

- (i) an actor ;
- (ii) a cameraman ;
- (iii) a director, including an assistant director ;
- (iv) a music director, including an assistant music director ;
- (v) an art director, including an assistant art director ;
- (vi) a dance director, including an assistant dance director ;
- (vii) an editor ;
- (viii) a singer ;
- (ix) a lyricist ;
- (x) a story writer ;

- (xi) a screen-play writer ;
- (xii) a dialogue writer; and
- (xiii) a dress designer.

■ Chartered Secretary

Non-specified profession - Non-specified profession means a profession other than specified above.

When specified accounts are to be maintained - Accounts are to be maintained compulsorily in the following circumstances :

<i>Nature of profession/ business</i>	<i>Quantum of gross receipts in any of three years immedi- ately preceding the previous year*</i>	<i>Kind of accounts to be maintained</i>
Specified	Does not exceed Rs. 60,000 [†]	Such accounts as enable Assessing Officer (AO) to compute taxable income
Specified	Exceeds Rs. 60,000 [†]	Specified books of account
Non-specified	Does not exceed Rs. 1,20,000 (or turnover is not likely to exceed Rs. 10,00,000)	Accounts are not required to be maintained
Non-specified	Exceeds Rs. 1,20,000 (or turnover exceeds or is likely to exceed Rs. 10,00,000)	Such accounts as enable AO to compute taxable income

Note : *In case of newly set up business, the relevant previous year.

[†]Rs. 80,000 in case of person engaged in medical profession, who also dispenses drugs.

Specified books of account - Account books specified by rule 6F are as follows :

- (i) a cash book ;
- (ii) a journal, if the accounts are maintained according to the mercantile system of accounting ;
- (iii) a ledger ;
- (iv) carbon copies of bills, whether machine numbered or otherwise serially numbered, exceeding Rs. 25, issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the person ;
- (v) original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person. The requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.

Following points may be kept in mind :

■ *'Cash book'* - Means a record of all cash receipts and payments, kept and maintained from day-to-day and giving the cash balance in hand at the end of each day or at the end of a specified period not exceeding a month.

■ *'Medical profession'* - A person carrying on medical profession shall, in addition to the books of account and other documents specified above, keep and maintain the following, namely:—

- (i) a daily case register in Form No. 3C; and

(ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

■ *Where to keep accounts* - The books of account and other documents specified above other than those relating to a previous year which has come to an end shall be kept and maintained by the person at the place where he is carrying on the profession or, where the profession is carried on in more places than one, at the principal place of his profession.

Where the person keeps and maintains separate books of account in respect of each place where the profession is carried on, such books of account and other documents may be kept and maintained at the respective places at which the profession is carried on.

■ *Period for which accounts are to be kept* - The books of account and other documents shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

Cash Book and Ledger shall be kept for 16 years.

Where, however, the assessment in relation to any assessment year has been reopened under section 147 of the Act within the period specified in section 149 of the Act, all the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has been completed.

SECTION 89/RULE 21A - RELIEF WHEN SALARY IS PAID IN ARREARS OR IN ADVANCE, ETC. - RULES FOR COMPUTATION OF

Sometimes a salaried employee may receive lump sum payments in the form of arrears of salary, gratuity, leave encashment and commuted value of pension. These payments relate to services rendered in the past, and in the case of gratuity, leave encashment and commuted value of pension, may not be fully exempt from tax due to the fact that the prescribed conditions and monetary limits are not met with. If these lump sum payments are taxed in the year of receipt, the tax incidence will be very high due to the progressively increasing slab rates of tax. To mitigate the hardship that may be caused due to the high incidence of tax, the Act provides for allowing tax relief on such lump sum payments.

Items on which relief is allowable - Relief is allowed on the following items :

- Salary received in arrears or in advance
- Gratuity received after putting in service of not less than five years (unexempt portion)
- Compensation for termination of employment, provided that the employee had put in at least three years' continuous service and the unexpired period of service is at least three years
- Commuted value of pension (unexempt portion)
- Leave encashment (unexempt portion).

How to compute relief on receipt of arrears of salary or salary received in advance - The relief on salary received in arrears or in advance (hereinafter to be referred as additional salary) is computed in the manner laid down in rule 21A(2) as under :

1. Calculate the tax payable on the total income, including the additional salary, of the relevant previous year in which the same is received.
2. Calculate the tax payable on the total income, excluding the additional salary, of the relevant previous year in which the additional salary is received.
3. Find out the difference between the tax at (1) and (2).
4. Compute the tax on the total income after excluding the additional salary in the previous year to which such salary relates.

5. Compute the tax on the total income after excluding the additional salary in the previous year to which such salary relates.
6. Find out the difference between tax at (4) and (5).
7. The excess of tax computed at (3) over tax computed at (6) is the amount of relief admissible under section 89(1). No relief is, however, admissible if tax computed at (3) is less than the tax computed at (6). In such a case, the assessee-employee need not apply for relief.

If the additional salary relates to more than one previous year, salary would be spread over the previous years to which it pertains in the manner explained above.

How to compute relief in respect of gratuity - Under section 89(1), a relief can be claimed if gratuity is received in excess of the limits specified. However, no relief is admissible if taxable gratuity is in respect of services rendered for less than five years. Cases in which the relief is admissible may be divided into two categories, namely, (a) where the gratuity payable is in respect of past service of 15 years or more, and (b) where such period is 5 years or more but less than 15 years. Relief in a case belonging to the first category is worked out as under :

1. Compute the average rate of tax on the total income, including the gratuity in the year of receipt.
2. Find out the tax on gratuity at the average rate of tax computed at (1) above.
3. Compute the average rate of tax by adding one-third of the gratuity to the other income of each of the three preceding years.
4. Find out the average of the three-average rates computed in the manner specified in (3) above and compute the tax on gratuity at that rate.
5. The difference between tax on the gratuity computed at (2) and that at (4) will be the relief admissible under section 89(1).

In cases covered under the second category, the relief is computed on the similar lines as above with the only difference that instead of average of the average rates of the preceding three years, the average of the rates of the preceding two years is computed by adding one-third of the gratuity to the other income of each of preceding two years.

Computation of relief in respect of compensation on termination of employment - If compensation is received by the assessee from his employer or former employer at or in connection with termination of his employment after continuous service for not less than 3 years and where the unexpired portion of his term of employment is also not less than 3 years, the relief is calculated in the same manner as if the gratuity was paid to the employee in respect of service rendered for a period of 15 years or more.

Computation of relief in respect of payment in commutation of pension - A relief can be claimed in respect of payment in commutation of pension received in excess of the prescribed limits. Such relief is computed in the same manner as if the gratuity was paid to the employee in respect of service rendered for a period of 15 years or more.

Computation of relief in respect of other payments - In respect of payment received by an employee other than those mentioned above, the relief under section 89(1) will be granted by the Central Board of Direct Taxes after examining the circumstances of each individual case.

How to claim the relief - In the normal course, the assessee should claim the relief only in the return of income for the assessment year relevant to the previous year in which the lump sum payment is received. For this purpose, a mere application for relief setting out the detailed calculations can be appended to the return of income. Alternatively, he can apply to the ITO even before payment is made for a direction to the employer to deduct tax at a lower rate.

As an exception to this general procedure, a special facility is afforded by the Act to an assessee who falls under any of the following categories :

- a Government servant
- employee of a company, co-operative society, local authority, University, institution, association or body.

In the case of such an assessee, the relief can be worked out and allowed even at the time of deduction of tax at source by the employer. For this purpose, the assessee-employee will have to furnish the prescribed particulars in Form No. 10E.

**SECTION 180/RULE 9 - ROYALTIES OR COPYRIGHT FEES, ETC.,
FOR LITERARY OR ARTISTIC WORK : COMPUTATION OF**

Income by way of royalties or copyright fees is chargeable to tax on 'due' or 'receipt' basis, as the case may be, under section 56 as income from other sources, if the same is not taxed under section 28 as income from business or profession or vocation. Where, however, the time taken by the author of a literary or artistic work in making thereof is more than 12 months, the amount received by him during any previous year on account of consideration for the assignment can, if the assessee so claims, be allocated for the purpose of assessment in the different assessment years as provided under rule 9. In such a case, for the assessment year relevant to the previous year in which lump sum consideration is received or is receivable, the tax payable will be the aggregate of the following :

- a. the amount of tax payable on the total income including only one-third of the lump sum payable ; and
- b. the tax on two-thirds of the lump sum consideration calculated at the average rates of tax computed at (a) above.

For the subsequent two years, the tax payable will be the tax computed in the manner mentioned at (a) above and reduced by one-half of the tax computed at (b) above.

**SECTION 203A/RULE 114A - TAX DEDUCTION ACCOUNT NUMBER -
PRESCRIBED PROCEDURE FOR**

Rule 114A(3) provides that where a person has deducted or deducts tax in accordance with the provisions of Chapter XVII-B on or after 1-6-1987, he shall make an application for allotment of TAN within one month from the end of the month in which the tax was deducted.

■ Once a TAN is allotted to a person, he need not make any more applications for TAN. In this respect it resembles PAN.

■ *What if there has been default in making the application ?* - The person concerned should submit the application for allotment of TAN immediately and not continue in default.

To whom should application for TAN be made ? - Rule 114A(2) provides that application for TAN shall be made to—

- a. the Assessing Officer assigned the function of allotment of TAN by the Chief Commissioner or Commissioner ; and
- b. where no such assignment has been made to the Assessing Officer having jurisdiction to assess the applicant.

Board's *Circular No. 497, dated 9-10-1987* states that in the metropolitan charges of Ahmedabad, Bangalore, Bombay, Calcutta, Delhi, Hyderabad, Madras and Pune the work of allotment of TAN has been centralised at the headquarters of the charges.

How should application for allotment of TAN be made ? - Rule 114A(1) provides that an application for allotment of TAN shall be made in duplicate in Form No. 49B.

**SECTION 139A/RULES 114B TO 114D - QUOTING OF PERMANENT
ACCOUNT NUMBER IN DOCUMENTS PERTAINING TO
CERTAIN PRESCRIBED TRANSACTIONS**

The statutory background

(i) Section 139A(5)(c) of the Act requires that every person shall quote the Permanent Account Number (PAN) allotted to him in all documents pertaining to certain *prescribed transactions* entered into by him, in the interests of revenue. It is also provided that the person should quote his General Index Register Number (GIR) till such time PAN is allotted to him. Section 139A(6) of the Act lays down that every person receiving any document relating to such a prescribed transaction must ensure that PAN or GIR has been duly quoted in the document. Section 139A(8) of the Act, as amended with effect from 1-8-1998, provides *inter alia* that the Board may *make rules* providing for the following aspects :

- ◆ The categories of transactions in relation to which PAN or GIR should be quoted by every person in the documents pertaining to the aforesaid transactions.
- ◆ Class or classes of persons to whom the aforesaid requirement shall not apply.
- ◆ The form and manner in which the person who has not been allotted PAN or GIR shall make his declaration.
- ◆ The manner in which PAN or GIR should be quoted in the said transactions.
- ◆ The time and manner in which the said transactions should be intimated to the *prescribed authority*.

Rules 114B to 114D cover the aforesaid aspects.

Date of effect

(ii) Rules 114B to 114D have come into effect *from 1-11-1998*. Therefore, persons entering into the prescribed transactions on or after that date must compulsorily quote the PAN or GIR in the relevant documents, or else make a declaration (Form No. 60) in case they have not been allotted PAN and also do not have any GIR [*see* (v) below].

The exempted persons

(iii) Rule 114C exempts the following categories of persons from the requirement of quoting PAN or GIR, or of furnishing declaration.

- ◆ *Agriculturists* - Persons having only agricultural income and no other income which is chargeable to tax, are exempted. However, they have to furnish a declaration in Form No. 61 in respect of each transaction entered into by them, if such transaction happens to be one of the prescribed transactions.
- ◆ *Non-residents* - Any person who is non-resident as defined in section 2(30) of the Act is also exempted.
- ◆ *Central Government* - Central Government, State Governments and Consular Officer in transactions where they are payers.

The prescribed transactions

(iv) Rule 114B specifies the categories of transactions in respect of which PAN or GIR should be quoted, or declaration should be filed, if such transactions are entered into on or after 1-11-1998. The specified transactions are briefly explained below.

(iva) *Property deals* - Transactions relating to sale or purchase of any immovable property valued at Rs. 5 lakhs or more are specified for this purpose. Apparently, the monetary limit will apply to the value shown in the document for transfer. Since both 'sale' and 'purchase' are covered, the seller as well as the purchaser must quote his PAN or GIR, or must file the declaration.

(ivb) *Vehicle deals* - Transactions relating to sale or purchase of a motor vehicle or vehicle as defined in section 2(28) of the Motor Vehicles Act, which requires registration by a registering authority under Chapter IV of that Act are next specified for this purpose. However, sale or purchase of any two-wheeled vehicles, inclusive of any detachable side-car having an extra wheel attached to the motor vehicle, are excluded. Thus sale/purchase of scooters, mopeds and the like does not attract the requirement of quoting PAN/GIR. Here also, since both 'sale' and 'purchase' are specified, both the seller and the purchaser must quote his PAN/GIR, or file the declaration.

(ivc) *Fixed deposits in banks* - Transaction involving time deposits (*i.e.*, fixed deposits) in any bank (nationalised banks, scheduled banks, co-operative banks, etc.), are next specified, if the amount involved on each occasion exceeds Rs. 50,000. If a minor having no taxable income desires to open such an account, he must quote PAN/GIR of his father or mother or guardian, as the case may be in the document covering the transaction (*i.e.*, application for opening account).

(ivd) *Deposits in post offices* - Transactions involving a deposit exceeding Rs. 50,000 in any account with Post Office Savings Bank are next specified. The use of the words 'any account' makes it clear that the account may be a savings bank account, or time deposit account. Investment in NSCs, IVPs are, however, not covered, since they are not 'deposits' in a Post Office Savings Bank.

(ive) *Share transactions* - Transactions involving contracts of a value exceeding Rs. 10 lakhs, for sale or purchase of securities are next specified. For this purpose, the term 'security' is defined in section 2(h) of the Securities Contracts (Regulation) Act, which reads as follows :

“‘Securities’ include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ii) Government securities;
- (iii) such other instruments as may be declared by the Central Government to be securities; and
- (iv) rights or interest in securities.”

(ivf) *Opening bank accounts* - Transactions involving opening an account in any bank (nationalised banks, scheduled banks, co-operative banks, etc.) are next specified. The 'account' contemplated here may be a current account, savings account, or overdraft account; time deposits referred to in (ivc) above are not covered.

If a minor having no taxable income desires to open such an account, he must quote PAN/GIR of his father or mother or guardian, as the case may be, in the document covering the transaction (*i.e.*, application for opening the account).

(ivg) *New telephone connections* - Making an application for installation of a telephone connection (including a cellular telephone connection) is next specified.

(ivh) *Hotel bills* - The last item specified pertains to payment to hotels and restaurants against their bills, if the bills are for amounts exceeding Rs. 25,000 at any one time.

Filing of declaration

(v) Under the third proviso to rule 114B, the question of filing a declaration will arise only in cases where the person entering into any of the prescribed transactions has not been allotted PAN and also does not have GIR. This proviso stipulates that such a person must file a declaration in Form No. 60 whenever he makes payment in cash or otherwise than by a crossed cheque drawn on a bank or through credit card issued by any bank in respect of any of the prescribed transactions. No declaration is necessary if the payment is made either by crossed cheque or through credit card issued by any bank. For example, if a bank

account is opened by means of a crossed cheque, or if a hotel bill for over Rs. 25,000 is settled by means of a credit card, and the payer does not have PAN or GIR, he is not required to file the declaration in Form No. 60.

Responsibility of the other party

(vi) Under sub-rule (2) of Rule 114C, the person who finalises the prescribed transaction (like registering officer, registering authority, bank manager, stockbroker, telephone authority, hotels/restaurants, postmaster - *see (via)* below) is required to ensure that either PAN or GIR is quoted in the document concerned, or a declaration in Form No. 60 is furnished.

(via) *Persons specified in rule 114C(2)* - Persons specified in rule 114C(2) are as under:

- (a) a registering officer appointed under the Registration Act, 1908 (16 of 1908);
- (b) a registering authority referred to in (ivb) above;
- (c) any manager or officer of a bank;
- (d) post master;
- (e) stock broker, sub-broker, share transfer agent, banker to an issue, trustee of a trust deed, registrar to issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediaries registered under section 12 of the Securities and Exchange Board of India Act;
- (f) any authority or company receiving application for installation of a telephone by it;
- (g) any person raising bills referred to in (ivh) above;
- (h) any person who purchases or sells the immovable property or motor vehicle;

Follow-up action by other party

(vii) Rule 114D enjoins upon every person mentioned in (via) above to forward to the concerned Director of Income-tax (Investigation), the following documents, namely :

- (a) copies of declaration in Form No. 60.
- (b) copies of declaration in Form No. 61.

Copies of declaration furnished in respect of transactions referred to in (ivf) above shall not be furnished to the Director of Income-tax (Investigation).

All declaration in Form Nos. 60 and 61 received during a financial year shall be forwarded to the concerned Director of Income-tax (Investigation) in two instalments, that is, the forms received upto 30th September shall be forwarded latest by 31st October of that year and the declaration received till the 31st March shall be furnished latest by 30th April of the same year.