

registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India), income-tax shall not be payable by the assessee in respect of his share in the income of the association or body computed in the manner provided in section 67A :

Provided that,—

- (a) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;
- (b) in any other case, the share of a member computed as aforesaid shall form part of his total income :

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.]

Deduction from tax on certain securities.

³⁸**86A.** [Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Original section was inserted by the Finance Act, 1965, w.e.f. 1-4-1965.]

CHAPTER VIII

³⁹[REBATES AND RELIEFS]

⁴⁰[A.—Rebate of income-tax

Rebate to be allowed in computing income-tax.

87. (1) In computing the amount of income-tax on the total income of an assessee with which he is chargeable for any assessment year, there shall be

(Contd. from p. 1.444)

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.”

38. Prior to its omission, section 86A as amended by the Finance Act, 1966, w.e.f. 1-4-1966, stood as under :

“86A. *Deduction from tax on certain securities.*—Where there is included in the total income of an assessee—

- (i) the interest due on any security of the Central Government issued or declared to be income-tax free, or
- (ii) the interest due on any security of a State Government issued income-tax free, the income-tax whereon is payable by the State Government,

the assessee shall be entitled to a deduction from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated on the amount so included at the average rate of income-tax or at the rate of twenty-seven and a half per cent, whichever is less.”

39. Substituted for “Relief in respect of income-tax” by the Finance Act, 1990, w.e.f. 1-4-1991. Earlier existing heading was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

40. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

allowed from the amount of income-tax (as computed before allowing the deductions under this Chapter), in accordance with and subject to the provisions of ⁴¹[sections 88, 88A and 88B], the deductions specified in those sections.

(2) The aggregate amount of the deductions under section 88 or section 88A ⁴²[or section 88B] shall not, in any case, exceed the amount of income-tax (as computed before allowing the deductions under this Chapter) on the total income of the assessee with which he is chargeable for any assessment year.

Rebate on life insurance premia, contribution to provident fund, etc.

⁴³88. (1) Subject to the provisions of this section, an assessee, being—

- (a) an individual, or
- (b) a Hindu undivided family, ⁴⁴[* * *]
- (c) ⁴⁵[* * *]

shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to twenty per cent of the aggregate of the sums referred to in sub-section (2) :

⁴⁶[**Provided** that in the case of an individual, whose income, derived from the exercise of his profession as an author, playwright, artist, musician, actor or sportsman (including an athlete), is twenty-five per cent or more of his total income, the provisions of this sub-section shall have effect as if for the words “twenty per cent”, the words “twenty-five per cent” had been substituted.]

(2) The sums referred to in sub-section (1) shall be any sums paid or deposited in the previous year by the assessee out of his income chargeable to tax—

- (i) to effect or to keep in force an insurance on the life of persons specified in sub-section (4);
- (ii) to effect or to keep in force a contract for a deferred annuity, ⁴⁷[not being an annuity plan referred to in clause (xiii a)], on the life of persons specified in sub-section (4) :

Provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity;

41. Substituted for “sections 88 and 88A” by the Finance Act, 1992, w.e.f. 1-4-1993.

42. Inserted, *ibid*.

43. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

44. Word “or” omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

45. Omitted, *ibid*. Prior to its omission, clause (c), as inserted by the Finance Act, 1990, w.e.f. 1-4-1991, read as under :

“(c) an association of persons or a body of individuals consisting, in either case, only of husband and wife governed by the system of community of property in force in the State of Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu,”

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

47. Substituted for “not being an annuity plan referred to in clause (ii) of sub-section (1) of section 80CCA” by the Finance Act, 1992, w.e.f. 1-4-1993.

- (iii) by way of deduction from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary;
- (iv) as a contribution by an individual to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies;
- (v) as a contribution to any provident fund set up by the Central Government and notified⁴⁸ by it in this behalf in the Official Gazette, where such contribution is to an account standing in the name of any person specified in sub-section (4);
- (vi) as a contribution by an employee to a recognised provident fund;
- (vii) as a contribution by an employee to an approved superannuation fund;
- (viii) in a ten-year account or a fifteen-year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, as amended from time to time, where such sums are deposited in an account standing in the name of the persons specified in sub-section (4);
- (ix) as subscription to any such security of the Central Government⁴⁹ [or any such deposit scheme] as that Government may, by notification⁵⁰ in the Official Gazette, specify in this behalf;
- (x) as subscription to the National Savings Certificates (VI Issue) and National Savings Certificates (VII Issue) issued under the Government Savings Certificates Act, 1959 (46 of 1959);
- (xi) as subscription to any such⁵¹ savings certificate as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), as the Central Government may, by notification⁵² in the Official Gazette, specify in this behalf;
- (xii) as a contribution,⁵³ [in the name of any person] specified in sub-section (4), for participation in the Unit-linked Insurance Plan, 1971 (hereafter in this section referred to as the Unit-linked Insurance Plan) deemed to have been made under sub-clause (a) of clause (8) of section 19 of the Unit Trust of India Act, 1963 (52 of 1963);
- (xiii) as a contribution⁵⁴ [in the name of any person specified in sub-section (4)] for participation in any such unit-linked insurance plan of the LIC

48. Public provident fund has been notified - *Vide* SO 55(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

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

50. National Savings Scheme has been notified—*Vide* GSR 819(E), dated 21-10-1992. *See* also Taxmann's Master Guide to Income-tax Act.

51. For definition of "savings certificate", *see* footnote 29 on p. 1.104 *ante*.

52. NSC (VIII Issue) has been notified - *Vide* SO 54(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

53. Substituted for "by any person" by the Finance Act, 1994, w.r.e.f. 1-4-1991.

54. Substituted for "by any individual", *ibid*.

Mutual Fund notified under clause (23D) of section 10, as the Central Government may, by notification⁵⁵ in the Official Gazette, specify in this behalf;

- ⁵⁶[(*xiiia*) to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation as the Central Government may, by notification⁵⁷ in the Official Gazette, specify;
- (*xiiib*) as subscription, not exceeding ten thousand rupees, to any units of any Mutual Fund notified under clause (23D) of section 10 or the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), under any plan formulated in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf;
- (*xiiic*) as a contribution by an individual to any pension fund set up by any Mutual Fund notified under clause (23D) of section 10⁵⁸[or by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)], as the Central Government may, by notification⁵⁹ in the Official Gazette, specify in this behalf;]
- (*xiv*) as subscription to any such deposit scheme of⁶⁰[, or as a contribution to any such pension fund set up by,] the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) (hereafter in this section referred to as the National Housing Bank), as the Central Government may, by notification⁶¹ in the Official Gazette, specify in this behalf;
- ⁶²[(*xiva*) as subscription to any such deposit scheme of—
- (*a*) a public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes; or
- (*b*) any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both, not being a scheme the interest on deposits whereunder qualifies for the purposes of computing the deduction under section 80L, as the

55. Dhanaraksha 1989 Plan of LIC Mutual Fund - *Vide* SO 56(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

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

57. Jeevan Dhara and Jeevan Akshay Plans of LIC - *Vide* Notification No. GSR 801(E), dated 7-10-1992. *See* Taxmann's Master Guide to Income-tax Act.

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

59. Retirement Benefit Unit Scheme of UTI - *Vide* Notification No. 9598 [F. No. 149/100/94-TPL], dated 1-9-1994/Kothari Pioneer Pension Plan—Notification No. SO 76(E), dated 30-1-1997.—*See* Taxmann's Master Guide to Income-tax Act.

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

61. Home Loan Account Scheme of National Housing Bank has been notified - *Vide* SO 57(E), dated 31-1-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

62. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

Central Government may, by notification in the Official Gazette, specify in this behalf;]

- (xv) for the purposes of purchase or construction of a residential house property the ⁶³[* * *] income from which is chargeable to tax under the head “Income from house property” (or which would, if it had not been used for the assessee’s own residence, have been chargeable to tax under that head), where such payments are made towards or by way of—
- (a) any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or
 - (b) any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him; or
 - (c) repayment of the amount borrowed by the assessee from—
 - (1) the Central Government or any State Government, or
 - (2) any bank, including a co-operative bank, or
 - (3) the Life Insurance Corporation, or
 - (4) the National Housing Bank, or
 - (5) any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is approved for the purposes of clause (viii) of sub-section (1) of section 36, or
 - (6) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or
 - (7) the assessee’s employer where such employer is a public company or a public sector company or a University established by law or a college affiliated to such University or a local authority ⁶⁴[or a co-operative society];
 - (d) stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee, but shall not include any payment towards or by way of—
 - (A) the admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or
 - (B) [Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.]

63. Words “construction of which is completed after the 31st day of March, 1987, and the” omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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

- (C) the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any other person on his behalf or been let out; or
- (D) any expenditure in respect of which deduction is allowable under the provisions of section 24;

⁶⁵[(xvi) as subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company ⁶⁶[or as subscription to any eligible issue of capital by any public financial institution] in the prescribed form⁶⁷ :

Provided that where a deduction is claimed and allowed under this clause with reference to the cost of any equity shares or debentures, the cost of such shares or debentures shall not be taken into account for the purposes of sections 54EA and 54EB.

Explanation.—For the purposes of this clause,—

- ⁶⁸[(i) “eligible issue of capital” means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue is utilised wholly and exclusively either for the purposes of developing, maintaining and operating an infrastructure facility or for generating, or for generating and distributing, power or for providing telecommunication services whether basic or cellular ;]
- (ii) “infrastructure facility” shall have the meaning assigned to it in ^{68a}[*clause (ca) of sub-section (12) of section 80-IA*];
- (iii) “public company” ⁶⁹ shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);
- ⁷⁰[(iv) “public financial institution” shall have the meaning assigned to it in section 4A⁷¹ of the Companies Act, 1956 (1 of 1956);]

65. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

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

67. See rule 20 and Form No. 59.

68. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, clause (i), as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

‘(i) “eligible issue of capital” means an issue made by a public company formed and registered in India and the issue is wholly and exclusively for the purposes of developing, maintaining and operating an infrastructure facility or for generating, or for generating and distributing power;’

68a. Words “the *Explanation* to sub-section (4) of section 80-IA” shall be substituted for “clause (ca) of sub-section (12) of section 80-IA” by the Finance Act, 1999, w.e.f. 1-4-2000.

69. Clause (iv) of section 3(1) of the Companies Act, 1956, defines “public company”. For text of section 3, see **Appendix One**.

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

71. For text of section 4A of the Companies Act, see **Appendix One**.

(xvii) as subscription to any units of any mutual fund referred to in clause (23D) of section 10 and approved by the Board on an application made by such mutual fund in the prescribed form⁷² :

Provided that where a deduction is claimed and allowed under this clause with reference to the cost of units, the cost of such units shall not be taken into account for the purposes of sections 54EA and 54EB :

Provided further that this clause shall apply if the amount of subscription to such units is subscribed only in the eligible issue of capital of any company.

Explanation.—For the purposes of this clause “eligible issue of capital” means an issue referred to in clause (i) of *Explanation* to clause (xvi) of sub-section (2) of section 88.]

(3) ⁷³[***]

(4) The persons referred to in sub-section (2) shall be the following, namely :—

⁷⁴[(a) for the purposes of clauses (i), (v), (xii) and (xiii) of that sub-section,—

(i) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(ii) in the case of a Hindu undivided family, any member thereof;]

(b) for the purposes of clause (ii) of that sub-section,—

(i) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(ii) ⁷⁵[***]

(c) for the purposes of ⁷⁶[clause (viii)] of that sub-section,—

(i) in the case of an individual, such individual or a minor of whom he is the guardian;

(ii) in the case of a Hindu undivided family, any member of the family;

72. See rule 20A and Form No. 59A.

73. Omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, sub-section (3) read as under :

“(3) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on a policy other than a contract for a deferred annuity as is not in excess of ten per cent of the actual capital sum assured.

Explanation.—In calculating any such capital sum, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.”

74. Substituted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

75. Omitted, *ibid.* Prior to its omission, sub-clause (ii) read as under :

“(ii) in the case of an association of persons or body of individuals, any member and any child of any of the members of such association or body;”

76. Substituted for “clauses (v) and (viii)”, *ibid.*

(iii) ⁷⁷[***]

(d) ⁷⁸[***]

(5) Where the aggregate of any sums specified in clause (xv) of sub-section (2) exceeds an amount of ten thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of ten thousand rupees.

⁷⁹[(5A) Where the aggregate of any sums specified in clause (i) to clause (xv) of sub-section (2) exceeds an amount of sixty thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of sixty thousand rupees :

Provided that, in the case of an individual referred to in the proviso to sub-section (1), the provisions of this sub-section shall have effect as if for the words “sixty thousand rupees”, the words “seventy thousand rupees” had been substituted.]

(6) The deduction from the amount of income-tax under sub-section (1) shall not exceed—

(i) in the case of an individual, ⁸⁰[whose income, derived from the exercise of his profession as an author, playwright, artist, musician, actor or sportsman (including an athlete), is twenty-five per cent or more of his total income, seventeen thousand five hundred] rupees;

(ii) in any other case, ⁸¹[fourteen] thousand rupees.

(7) Where, in any previous year, an assessee—

(i) terminates his contract of insurance referred to in clause (i) of sub-section (2), by notice to that effect or where the contract ceases to be in force by reason of failure to pay any premium, by not reviving ⁸²[contract of insurance,—

(a) in case of any single premium policy, within two years after the date of commencement of insurance; or

(b) in any other case, before premiums have been paid for two years; or]

77. Omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991. Prior to its omission, sub-clause (iii) read as under :

“(iii) in the case of an association of persons or body of individuals, such association or body;”

78. Omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991. Prior to its omission, clause (d) read as under :

“(d) for the purposes of clause (xii) of that sub-section,—

(i) in the case of an individual, such individual;

(ii) in the case of an association of persons or body of individuals, any one member of such association or body.”

79. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

80. Substituted for “being an author, playwright, artist, musician, actor or sportsman (including an athlete), fourteen thousand” by the Finance Act, 1992, w.e.f. 1-4-1993.

81. Substituted for “twelve” by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Earlier, “twelve” was substituted for “ten” by the Finance Act, 1992, w.e.f. 1-4-1993.

82. Substituted for “contract of insurance, before premiums have been paid for two years; or” by the Finance Act, 1995, w.e.f. 1-4-1996.

- (ii) terminates his participation in any unit-linked insurance plan referred to in clause (xii) or clause (xiii) of sub-section (2), by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for five years; or
- (iii) transfers the house property referred to in clause (xv) of sub-section (2) before the expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in that clause,

then,—

- (a) no deduction shall be allowed to the assessee under sub-section (1) with reference to any of the sums, referred to in clauses (i), (xii), (xiii) and (xv) of sub-section (2), paid in such previous year; and
- (b) the aggregate amount of the deductions of income-tax so allowed in respect of the previous year or years preceding such previous year, shall be deemed to be tax payable by the assessee in the assessment year relevant to such previous year and shall be added to the tax on the total income of the assessee with which he is chargeable for such assessment year.

⁸³[(7A) If any equity shares or debentures, with reference to the cost of which a deduction is allowed under sub-section (1), are sold or otherwise transferred by the assessee to any person at any time within a period of three years from the date of their acquisition, the aggregate amount of the deductions of income-tax so allowed in respect of such equity shares or debentures in the previous year or years preceding the previous year in which such sale or transfer has taken place shall be deemed to be tax payable by the assessee for the assessment year relevant to such previous year and shall be added to the amount of income-tax on the total income of the assessee with which he is chargeable for such assessment year.]

Explanation.—A person shall be treated as having acquired any shares or debentures on the date on which his name is entered in relation to those shares or debentures in the register of members or of debenture-holders, as the case may be, of the public company.]

(8) In this section,—

- (i) “contribution” to any fund shall not include any sums in repayment of loan;
- (ii) “insurance” shall include—
 - (a) a policy of insurance on the life of an individual or the spouse or the child of such individual or a member of a Hindu undivided family securing the payment of specified sum on the stipulated date of maturity, if such person is alive on such date notwithstanding that the policy of insurance provides only for the return of premiums paid (with or without any interest thereon) in the event of such person dying before the said stipulated date;

83. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

- (b) a policy of insurance effected by an individual or a member of a Hindu undivided family for the benefit of a minor with the object of enabling the minor, after he has attained majority to secure insurance on his own life by adopting the policy and on his being alive on a date (after such adoption) specified in the policy in this behalf;
- (iii) “Life Insurance Corporation” means the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956);
- (iv) “public company”⁸⁴ shall have the same meaning as in section 3 of the Companies Act, 1956 (1 of 1956);
- (v) “security” means a Government security⁸⁵ as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);
- (vi) “transfer” shall be deemed to include also the transactions referred to in clause (f) of section 269UA.

Rebate in respect of investment in certain new shares or units.

88A. ⁸⁶[*Omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1994.*]

84. Clause (iv) of section 3(1) of the Companies Act, 1956, defines “public company”. For text of section 3, see **Appendix One**.

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

86. Prior to its omission, section 88A, as amended by the Finance Act, 1990, w.e.f. 1-4-1991 and Finance Act, 1994, w.r.e.f. 1-4-1991, read as under :

‘88A. *Rebate in respect of investment in certain new shares or units.*—(1) Where an assessee being—

- (a) an individual; or
- (b) a Hindu undivided family;
- (c) [***]

has acquired, in the previous year, out of his income chargeable to tax,—

- (i) equity shares forming part of any eligible issue of capital; or
- (ii) units issued under any scheme of any Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), if the amount of subscription to such units is subscribed, within a period of six months from the close of subscription under such scheme, only to eligible issue of capital,

he shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to twenty per cent of the cost of such shares or units to such assessee :

Provided that the amount of subscription to such units may be subscribed, for a period not exceeding six months from the close of subscription under any scheme referred to in clause (ii) in such securities of the Central Government, as may be approved by the Board in this behalf :

Provided further that no deduction shall be allowed in respect of units issued under any scheme referred to in clause (ii) where the subscription under such scheme closes after the 30th day of September, 1990.

Explanation.—Where in any previous year, the assessee has acquired any shares or units referred to in this sub-section and has, within a period of six months from the end of that previous year paid the whole or a part of the amount, if any, remaining unpaid on such shares or units, the amount so paid shall be deemed to have been paid by the assessee towards the cost of such shares or units in the previous year.

(Contd. on p. 1.455)

(Contd. from p. 1.454)

(2) Where the aggregate cost to the assessee of the shares or units referred to in sub-section (1) which are acquired by him in the previous year exceeds twenty-five thousand rupees, the deduction under that sub-section shall be allowed only with reference to such of those shares or units (being shares or units the aggregate cost whereof to the assessee does not exceed twenty-five thousand rupees) as are specified by him in this behalf.

(3) For the purposes of this section, "eligible issue of capital" means an issue of equity shares which satisfies the following conditions, namely :—

(a) the issue is made by a public company formed and registered in India and the issue is wholly and exclusively for the purposes of carrying on the business of—

(i) construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule; or

(ii) providing long-term finance for construction or purchase of houses in India for residential purposes :

Provided that in the case of a public company carrying on the business referred to in this sub-clause, such company is approved by the Central Government for the purposes of this section; or

(iii) a hospital; or

(iv) a hotel approved by the prescribed authority; or

(v) operation of ships;

(b) the issue is an issue of capital made by the company for the first time :

Provided that this clause shall not apply in the case of an issue of equity shares made by a public company formed and registered in India with the main object of carrying on the business of operation of ships;

(c) the shares forming part of the issue are offered for subscription to the public and such offer for subscription is made by the company before the 1st day of April, 1991;

(d) such other conditions as may be prescribed :

Provided that in the case of a company which had originally been incorporated as a private company but has become a public company under the provisions of the Companies Act, 1956 (1 of 1956), an issue of equity shares made by it for the first time after it has become a public company shall not be regarded as an eligible issue of capital, if—

(i) such company had declared, distributed or paid any dividend when it was a private company; or

(ii) any of the shares forming part of such issue is offered for subscription at a premium.

Explanation 1.—If any question arises as to whether any issue of equity shares would constitute an eligible issue of capital for the purposes of this section, the question shall be referred to the Central Government whose decision thereon shall be final.

Explanation 2.—In this sub-section and sub-section (4), "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956).

(4) The deduction under sub-section (1) shall not be allowed unless the assessee has—

(i) subscribed to the shares in pursuance of an offer for subscription to the public made by the public company or in pursuance of a reservation or an option in his favour by reason of his being a promoter of the company; or

(ii) purchased the shares from a person who is specified as an underwriter in respect of the issue of such shares in pursuance of clause 11 of Part I of Schedule II to the Companies Act, 1956 (1 of 1956) and who has acquired such shares by virtue of his obligation as such underwriter.

(5) If any equity shares or units, with reference to the cost of which a deduction is allowed under sub-section (1), are sold or otherwise transferred by the assessee to any person at any time within a period of three years from the date of their acquisition, the aggregate

(Contd. on p. 1.456)

⁸⁷[**Rebate of income-tax in case of individuals of sixty-five years or above.**

88B. An assessee, being an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income, with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of ten thousand rupees, whichever is less.]

B.—Relief for income-tax]

Relief when salary, etc., is paid in arrears or in advance.

⁸⁸**89.** (1) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been

(Contd. from p. 1.455)

amount of the deductions of income-tax so allowed in respect of such equity shares or units in the previous year or years preceding the previous year in which such sale or transfer has taken place shall be deemed to be tax payable by the assessee for the assessment year relevant to such previous year and shall be added to the amount of income-tax on the total income of the assessee with which he is chargeable for such assessment year.

Explanation.—A person shall be treated as having acquired any shares or units on the date on which his name is entered in relation to those shares or units in the register of members of the company or in the relevant records of any Mutual Fund or Unit Trust of India, referred to in sub-section (1).

(6) Where a deduction is claimed and allowed under sub-section (1) with reference to the cost of any equity shares, the cost of such shares shall not be taken into account for the purposes of section 54E.'

87. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, section 88B, as inserted by the Finance Act, 1992, w.e.f. 1-4-1993 and later on amended by the Finance Act, 1993, w.e.f. 1-4-1994, the Finance Act, 1994, w.e.f. 1-4-1995 and the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

'88B. *Rebate of income-tax in case of individuals of sixty-five years and above.*—An assessee, being an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year and whose gross total income does not exceed one hundred and twenty thousand rupees, shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to forty per cent of such income-tax.

Explanation.—For the purposes of this section, "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under Chapter VI-A.'

88. See also Circular No. 331, dated 22-3-1982 and Circular No. 431, dated 12-9-1985. For details, see Taxmann's Master Guide to Income-tax Act.

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

assessed,⁸⁹[the⁹⁰[Assessing] Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed⁹¹].

(2)⁹²[***].

Tax relief in relation to export turnover.

89A. [*Omitted by the Finance Act, 1983, w.e.f. 1-4-1983. The provisions of this section have now been substituted by a new scheme contained in a new section 80HHC inserted by the Finance Act, 1983, w.e.f. 1-4-1983. Originally section 89A was inserted by the Finance Act, 1982, w.e.f. 1-6-1982.*]

CHAPTER IX

DOUBLE TAXATION RELIEF

⁹³[Agreement with foreign countries.

⁹⁴90.⁹⁵[(1)] The Central Government may enter into an agreement with the Government of any country outside India—

- (a) for the granting of relief in respect of income on which have been paid both income-tax under this Act and income-tax in that country, or
- (b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, or
- (c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or

89. Substituted for “the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate” by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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

91. See rule 21A for rules for computation of relief. See rule 21AA and Form No. 10E for prescribed particulars for claiming relief under section 89(1). See also **Appendix Two** for an analysis of rule 21A.

92. Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its omission, sub-section (2), stood as under :

“(2) Where, by reason of any portion of income from interest on securities being received in arrears, an assessee’s total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.”

93. Substituted by the Finance Act, 1972, w.e.f. 1-4-1972.

94. For notified agreements for avoidance of double taxation, refer Taxmann’s Direct Taxes Circulars, 1999 edn., Vol. 2, pp. 1.1447-1.2430.

See also Circular No. 333, dated 2-4-1982, Circular No. 638, dated 28-10-1992, Circular No. 659, dated 8-9-1993, Circular No. 682, dated 30-3-1994 and Circular No. 734, dated 24-1-1996. For details, see Taxmann’s Master Guide to Income-tax Act.

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

95. Renumbered by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1972.

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.]

⁹⁶[(2) Where the Central Government has entered into an agreement with the Government of any country outside India under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.]

Countries with which no agreement exists.

⁹⁷91. (1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

(a) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(b) of a sum calculated on that income at the Indian rate of tax;

whichever is less.

(3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

96. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1972.

97. See also Circular No. 11/68/63-TPL, dated 13-12-1963 and Instruction No. 992, dated 29-7-1976. For details, see Taxmann's Master Guide to Income-tax Act.

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

Explanation.—In this section,—

- (i) the expression “Indian income-tax” means income-tax⁹⁸[***] charged in accordance with the provisions of this Act;
- (ii) the expression “Indian rate of tax” means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this⁹⁹[Chapter], by the total income;
- (iii) the expression “rate of tax of the said country” means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country;
- (iv) the expression “income-tax” in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

¹Income from transactions with non-residents, how computed in certain cases.

²92. Where a business is carried on between a resident and a non-resident and it appears to the ³[Assessing] Officer that, owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the ³[Assessing] Officer shall determine the amount of profits which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident.

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

²93. (1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply—

98. “and super-tax” omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

99. Substituted for “section” by the Finance Act, 1964, w.e.f. 1-4-1964.

1. See rules 10 and 11 for manner of computation of income from ‘transactions with non-residents’. See also **Appendix Two**.

2. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

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

- (a) where any person has, by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act;
- (b) where, whether before or after any such transfer, any such first-mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

Explanation.—The provisions of this sub-section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act.

(2) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(3) The provisions of this section shall not apply if the first-mentioned person in sub-section (1) shows to the satisfaction of the ⁴[Assessing] Officer that—

- (a) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or
- (b) the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

Explanation.—For the purposes of this section,—

- (a) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;
- (b) any body corporate incorporated outside India shall be treated as if it were a non-resident;

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

- (c) a person shall be deemed to have power to enjoy the income of a non-resident if—
- (i) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person in sub-section (1), or
 - (ii) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or
 - (iii) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or
 - (iv) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or
 - (v) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;
- (d) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4)(a) “Assets” includes property or rights of any kind and “transfer” in relation to rights includes the creation of those rights ;

(b) “associated operation”, in relation to any transfer, means an operation of any kind effected by any person in relation to—

- (i) any of the assets transferred, or
- (ii) any assets representing, whether directly or indirectly, any of the assets transferred, or
- (iii) the income arising from any such assets, or
- (iv) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets ;

(c) “benefit” includes a payment of any kind ;

(d) “capital sum” means—

- (i) any sum paid or payable by way of a loan or repayment of a loan ; and
- (ii) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money’s worth.

Avoidance of tax by certain transactions in securities.

594. (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as “the owner”) sells or transfers those securities, and buys back or reacquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be the income of the owner and not to be the income of any other person.

Explanation.—The references in this sub-section to buying back or reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or reacquired.

(2) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the ⁶[Assessing] Officer—

- (a) that there has been no avoidance of income-tax, or
- (b) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as if references to selling back or retransferring the securities included references to selling or transferring similar securities.

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

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

(6) The ⁷[Assessing] Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

Explanation.—For the purposes of this section,—

- (a) “interest” includes a dividend ;
- (b) “securities” includes stocks and shares ;
- (c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred.

CHAPTER XI

ADDITIONAL INCOME-TAX ON UNDISTRIBUTED PROFITS

[Chapter XI omitted by the Finance Act, 1987, w.e.f. 1-4-1988. While sections 95 to 103 were omitted by the Finance Act, 1965, w.e.f. 1-4-1965, sections 104 to 109 were omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]

Income-tax on undistributed income of certain companies.

⁸**104.***[Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]*

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- 7. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
 - 8. Omitted section 104, as amended by the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1966, w.e.f. 1-4-1966, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, the Finance Act, 1973, w.e.f. 1-4-1974, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, read as under :
 “104. *Income-tax on undistributed income of certain companies.*—(1) Subject to the provisions of this section and of sections 105, 106, 107 and 107A, where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the twelve months immediately following the expiry of that previous year are less than the statutory percentage of the distributable income of the company of that previous year, the Income-tax Officer shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under section 143 or section 144, be liable to pay income-tax at the rate of—
 - (a) fifty per cent, in the case of an investment company,
 - (b) thirty-seven per cent, in the case of a trading company, and
 - (c) twenty-five per cent, in the case of any other company,
 on the distributable income as reduced by the amount of dividends actually distributed, if any, within the said period of twelve months.

(Contd. on p. 1.464)

Special provisions for certain companies.

⁹105.[*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

(Contd. from p. 1.463)

- (2) The Income-tax Officer shall not make an order under sub-section (1) if he is satisfied—
- (i) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared within the period of twelve months referred to in sub-section (1) would be unreasonable ; or
 - (ii) that the payment of a dividend or a larger dividend than that declared within the period of twelve months referred to in sub-section (1) would not have resulted in a benefit to the revenue ; or
 - (iii) that at least seventy-five per cent of the share capital of the company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income from dividend whereof is exempt under section 11.
- (3) If the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions as may be specified therein, exempt any class of companies to which the provisions of this section apply from the operation of this section.
- (4) Without prejudice to the provisions of section 108, nothing contained in this section shall apply to—
- (a) an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power ;
 - (b) a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India.

Explanation.—For the purposes of clause (a) of this sub-section, the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, if the income attributable to any of the aforesaid activities included in its gross total income for the relevant previous year is not less than fifty-one per cent of such total income.”

9. Omitted section 105, as amended by the Finance Act, 1973, w.e.f. 1-4-1974, stood as under : ‘105. *Special provisions for certain companies.*—(1) No order under section 104 shall be made,—
- (i) in the case of an investment company which has distributed, within the period of twelve months referred to in sub-section (1) of section 104, not less than eighty per cent of its distributable income ; or
 - (ii) in the case of any other company whose distribution, within the period of twelve months referred to in sub-section (1) of section 104, falls short of the statutory percentage by not more than ten per cent of its distributable income ; or
 - (iii) in any case where according to the return made by a company under section 139 it has distributed, within the period of twelve months referred to in sub-section (1) of section 104, not less than the statutory percentage of its distributable income, but in the assessment made by the Income-tax Officer under section 143 or section 144 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of section 145 or section 144 or the omission by the company to disclose its income fully and truly ; or

(Contd. on p. 1.465)

Period of limitation for making orders under section 104.

¹⁰**106.** [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]

Approval of Inspecting Assistant Commissioner for orders under section 104.

¹¹**107.** [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]

(Contd. from p. 1.464)

- (iv) in the case of a company where a reassessment is made under the provisions of clause (b) of section 147 and the sum distributed as dividends falls short of the statutory percentage of the distributable income determined on the basis of the reassessment ;

unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice, a further distribution of its profits and gains so that the total distribution made is not less than the statutory percentage of the distributable income.

Explanation.—For the purposes of clause (iv) of this sub-section, “the sum distributed as dividends” means,—

- (a) where in relation to the assessment made under section 143 or section 144, any further distribution of dividends was made by the company in pursuance of a notice under this sub-section, the aggregate of the following sums, namely :—

- (i) the sum distributed as dividends, within the period of twelve months referred to in sub-section (1) of section 104, and
(ii) the sum distributed as dividends within the period of three months from the receipt of the said notice ;

- (b) where an order under section 107A has been made by the Board in relation to the assessment made under section 143 or section 144, the sum distributed as dividends within the period determined by the Board under the provisions of sub-section (4) of section 107A ;

- (c) in any other case, the sum distributed as dividends within the period of twelve months referred to in sub-section (1) of section 104.

(2) Any further distribution made under sub-section (1) shall not be taken into account in deciding whether the provisions of section 104 apply in respect of the previous year in which the further distribution is made.’

10. Omitted section 106, as amended by the Finance Act, 1964, w.e.f. 1-4-1964 and substituted by the Finance Act, 1975, w.e.f. 1-4-1975, stood as under :

“106. *Period of limitation for making orders under section 104.*—No order under section 104 shall be made at any time after—

- (a) the expiry of—
(i) four years from the end of the assessment year relevant to the previous year referred to in sub-section (1) of that section, where such assessment year is an assessment year commencing on or before the 1st day of April, 1974 ;
(ii) two years from the end of the assessment year relevant to the previous year referred to in sub-section (1) of that section, where such assessment year is an assessment year commencing after the 1st day of April, 1974 ; or
(b) the expiry of one year from the end of the financial year in which the assessment or reassessment of the profits and gains of the previous year referred to in sub-section (1) of that section is made,

whichever is later :

Provided that the period of limitation specified in this section shall not apply in a case where the company has made an application to the Board under section 107A.”

11. Omitted section 107, as amended by the Finance Act, 1964, w.e.f. 1-4-1964, stood as under :

(Contd. on p. 1.466)

Reduction of minimum distribution in certain cases.

¹²**107A.** [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.]

(Contd from p. 1.465)

“107. *Approval of Inspecting Assistant Commissioner for orders under section 104.*— Except in cases where a decision is given by the Board under sub-section (4) of section 107A, no order shall be made by the Income-tax Officer under section 104 unless the previous approval of the Inspecting Assistant Commissioner has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he has given the company concerned an opportunity of being heard.”

12. Omitted section 107A, as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, stood as under :

“107A. *Reduction of minimum distribution in certain cases.*—(1) If any company to which the provisions of section 104 apply (not being an investment company) considers that, having regard to the current requirements for the development of its business, it would not be possible or advisable for it to declare or pay a dividend of an amount larger than that already declared or paid or proposed to be declared or paid by it, it may make an application to the Board for reduction of the amount of the minimum distribution required under this Chapter.

(2) Every application under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be made within the period of twelve months referred to in sub-section (1) of section 104 or, where the Income-tax Officer has served on the company a notice under sub-section (1) of section 105 of his intention to make an order under section 104, within thirty days of the receipt of such notice.

(3) Every application under sub-section (1) shall be accompanied by a fee of one hundred rupees.

(4) If the Board is satisfied that a distribution equal to the statutory percentage of the distributable income of the company concerned would be unreasonable, it may reduce the amount of minimum distribution required of the company under this Chapter by such amount, not exceeding twenty per cent of the statutory percentage of its distributable income, as it may consider fit and further determine the period within which such distribution shall be made.

(5) The Board shall not reject an application made under sub-section (1) without giving the company concerned an opportunity of being heard and its decision shall be final as respects matters concluded by it.

(6) Where an application is made by the company after receipt of a notice from the Income-tax Officer under sub-section (1) of section 105 and a further distribution is made in accordance with the decision thereon of the Board, such further distribution shall not be taken into account in deciding whether the provisions of section 104 apply in respect of the previous year in which the further distribution is made.

(7) Where an application is made by a company under this section, the Income-tax Officer shall not make any order under section 104 until the decision is given by the Board on that application :

Provided that where a company is required to make a distribution or further distribution of its profits and gains in accordance with the decision of the Board and fails to make such distribution or further distribution within the period determined thereunder, the Income-tax Officer shall make an order under section 104 as if no reduction of the amount of minimum distribution had been made by the Board under this section.

(Contd on p. 1.467)

Savings for company in which public are substantially interested.

^{12a}108. [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]

“Distributable income”, “investment company” and “statutory percentage” defined.

¹³109. [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.]

(Contd from p. 1.466)

(8) If the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, declare that the provisions of this section shall not apply to any class of companies or in regard to the whole or any part of the profits and gains of any class of companies.

(9) Notwithstanding anything contained in section 246, no appeal shall lie to the Commissioner (Appeals) against an order of the Income-tax Officer under section 104 in a case where a decision has been given by the Board.

(10) The Board may, by notification in the Official Gazette, direct that, subject to such conditions, if any, as may be specified in the notification, the powers exercisable by it under this section shall also be exercisable by any Commissioner in respect of such companies or classes of companies as may be specified therein and thereupon in respect of such companies or classes of companies the provisions of this section and sections 106 and 107 shall have effect as if references in the said sections to the Board were references to such Commissioner.”

12a. Section 108, prior to its omission, stood as under :

“108. *Savings for company in which public are substantially interested.*—Nothing contained in section 104 shall apply—

- (a) to any company in which the public are substantially interested ; or
- (b) to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.”

13. Omitted section 109, as amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1966, w.e.f. 1-4-1966, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, the Finance Act, 1968, w.e.f. 1-4-1969, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and the Finance Act, 1983, w.e.f. 1-4-1984, stood as under :

‘109. “*Distributable income*”, “*investment company*” and “*statutory percentage*” defined.—For the purposes of sections 104, 105 and 107A and this section,—

- (i) “distributable income” means the gross total income of a company as reduced by—
 - (a) the amount of income-tax payable by the company in respect of its total income, but excluding the amount of any income-tax payable under section 104 ;
 - (b) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income ;
 - (c) any sum with reference to which a deduction is allowable to the company under the provisions of section 80G ;
 - (d) losses under the head “Capital gains” relating to the capital assets, other than short-term capital assets ;

(Contd on p. 1.468)

(Contd. from p. 1.467)

- (e) income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India :

Provided that, when the prohibition or restriction is subsequently removed, any reduction allowed under this provision shall be deemed to be a part of the distributable income of the previous year in which the prohibition or restriction is removed ;

- (f) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949 (10 of 1949) ;
- (g) any expenditure actually incurred for the purposes of the business, but not deducted in computing the income chargeable under the head “Profits and gains of business or profession” being—
- (1) a bonus or gratuity paid to an employee,
 - (2) legal charges,
 - (3) any such expenditure as is referred to in clause (c) of section 40,
 - (4) any expenditure claimed as a revenue expenditure but not allowed to be deducted as such and not resulting in the creation of an asset or enhancement in the value of an existing asset ;
- (h) any expenditure wholly and exclusively incurred for the purpose of making or earning any income (other than income chargeable under the head “Profits and gains of business or profession”) included in the gross total income but not allowed to be deducted in computing such income and not resulting in the creation of an asset or enhancement in the value of an existing asset ;

(ia) [***]

(ib) “consultancy service company” means an Indian company whose business consists wholly in the provision of technical know-how, or in the rendering of services in connection with the provision of technical know-how, to other persons.

Explanation.—In this clause and in sub-clause (3) of clause (iii), the expression “provision of technical know-how” means,—

- (i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or similar property ;
 - (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or similar property ;
 - (iii) the use of any patent, invention, model, design, secret formula or process or similar property ;
 - (iv) the imparting of any information concerning industrial, commercial or scientific knowledge, experience or skill ;
- (ii) “investment company” means a company whose gross total income consists mainly of income which is chargeable under the heads “Interest on securities”, “Income from house property”, “Capital gains” and “Income from other sources” ;
- (ia) “trading company” means a company whose business consists mainly in dealing in goods or merchandise manufactured, produced or processed by a person other than that company and whose income attributable to such business included in its gross total income is not less than fifty-one per cent of the amount of such gross total income ;

(Contd. on p. 1.469)

(Contd. from p. 1.468)

(iii) “statutory percentage” means,—

- | | |
|---|-------|
| (1) in the case of a consultancy service company | 45% ; |
| (2) in the case of an investment company, other than an investment company which falls under sub-clause (3) of this clause | 90% ; |
| (3) in the case of an Indian company, not being an Indian company referred to in clause (a) of sub-section (4) of section 104 or a consultancy service company, a part of whose gross total income consists of profits and gains attributable to— | |
| (i) the business of construction of ships or of manufacture or processing of goods or of mining or of generation or distribution of electricity or any other form of power ; or | |
| (ii) the business of provision of technical know-how, or of rendering services in connection with the provision of technical know-how, to other persons— | |
| (a) in relation to that part of its gross total income as is attributable to the business referred to in item (i) of this sub-clause | Nil ; |
| (b) in relation to that part of its gross total income as is attributable to the business referred to in item (ii) of this sub-clause | 45% ; |
| (c) in relation to the remaining part of its gross total income— | |
| (1) if it is an investment company or a company which satisfies the conditions specified in sub-clause (4)(a) of this clause | 90% ; |
| (2) in any other case | 60% . |

Explanation.—The provisions of this Chapter shall apply as if each of the aforesaid parts of the gross total income of the company were the gross total income of the company in relation to that part and as if the amount of dividends actually distributed and the distributable income were also similarly apportioned for the purposes of section 104 and this section ;

- (4) in the case of any other company not referred to in the preceding clauses,—
- (a) where the accumulated profits and reserves (including depreciation reserves and any amounts capitalised from the earlier reserves) representing accumulations of past profits which have not been the subject of an order under section 104 or the corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922), exceed—
- either
- I. the aggregate of—
- (i) the paid-up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order under section 104, and
- (ii) any loan capital which is the property of the shareholders ;

or

(Contd. on p. 1.470)

CHAPTER XII**DETERMINATION OF TAX IN CERTAIN SPECIAL CASES**

¹⁴[**Determination of tax where total income includes income on which no tax is payable.**

110. Where there is included in the total income of an assessee any income on which no income-tax is payable under the provisions of this Act, the assessee shall be entitled to a deduction, from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable.]

Tax on accumulated balance of recognised provident fund.

111. (1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income, owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, the ¹⁵[Assessing] Officer shall calculate the total of the various sums of ¹⁶[tax] in accordance with the provisions of sub-rule (1) of rule 9 thereof.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 of Part A of the Fourth Schedule becomes payable, super-tax shall be calculated in the manner provided in sub-rule (2) of rule 9 thereof.

¹⁷[**Tax on long-term capital gains.**

¹⁸**112.** (1) Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under the head “Capital gains”, the tax payable by the assessee on the total income shall be the aggregate of,—

(Contd. from p. 1.469)

II. the value of the fixed assets as shown in the books of the company, 90% :
whichever of these is greater :

Provided that in the case of such company, not being a trading company, sub-clause (a) shall have effect as if for the word “exceed”, the words “exceed twice the amount of” were substituted ;

(b) where sub-clause (a) does not apply 60% ;

(iv) “gross total income” means the total income computed in accordance with the provisions of this Act before making any deduction under Chapter VI-A.’

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

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

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

17. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 112 was omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and replaced by section 80S. Before its omission, the section was first amended by the Finance Act, 1965, w.e.f. 1-4-1965 and then by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965.

18. See also Circular No. 721, dated 13-9-1995. For details, see Taxmann’s Master Guide to Income-tax Act.