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.

(*a*) in the case of an individual or a Hindu undivided family, [19][being a resident,]—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been his total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent :

Provided that where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be computed at the rate of twenty per cent ;

(*b*) in the case of a [19][domestic] company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of [20][twenty] per cent :

[21][***]

[22][(*c*) in the case of a non-resident (not being a company) or a foreign company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent ;]

[23][(*d*)] in any other case [24][of a resident],—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of [25][twenty] per cent.

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

20. Substituted for "thirty" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Earlier "thirty" was substituted for "forty" by the Finance Act, 1994, w.e.f. 1-4-1995.

21. The proviso omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission the proviso, as amended by the Finance Act,1994, w.e.f. 1-4-1995, read as under :

'**Provided** that in relation to long-term capital gains arising to a venture capital company from the transfer of equity shares of venture capital undertakings, the provisions of sub-clause (*ii*) shall have effect as if for the words "thirty per cent", the words "twenty per cent" had been substituted ;'

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

23. Existing clause (*c*) relettered as clause (*d*) by the Finance Act, 1994, w.e.f. 1-4-1995.

24. Inserted, *ibid.*

25. Substituted for "thirty" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

Explanation.—[26][***]

The following proviso and Explanation shall be inserted at the end of sub-section (1) of section 112 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Provided *that where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities, exceeds ten per cent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee.*

Explanation.—*For the purposes of this sub-section, "listed securities" means the securities—*

*(*a*) as defined in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (32 of 1956); and*

*(*b*) listed in any recognised stock exchange in India.*

(2) Where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(3) Where the total income of an assessee includes any income arising from the transfer of a long-term capital asset, the total income shall be reduced by the amount of such income and the rebate under section 88 shall be allowed from the income-tax on the total income as so reduced.

Tax on interest on National Savings Certificates (First Issue).

112A. [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Original section 112A was inserted by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965 and later on amended by the Finance Act, 1966, w.e.f. 1-4-1966, Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, Taxation Laws (Amendment) Act, 1970, with retrospective effect from 1-4-1968/1969 and Finance Act, 1973, with retrospective effect from 1-4-1972.*]

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26. The *Explanation* omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, the *Explanation* read as under :

'*Explanation.*—For the purposes of this sub-section,—

(*a*) "venture capital company" means such company as is engaged in providing finance to venture capital undertakings mainly by way of acquiring equity shares of such undertakings or, if the circumstances so require, by way of advancing loans to such undertakings, and is approved by the Central Government in this behalf ;

(*b*) "venture capital undertaking" means such company as the prescribed authority may, having regard to the following factors, approve for the purposes of this sub-section, namely :—

(*1*) the total investment in the company does not exceed ten crore rupees or such other higher amount as may be prescribed ;

(*2*) the company does not have adequate financial resources to undertake projects for which it is otherwise professionally or technically equipped ; and

(*3*) the company seeks to employ any technology which will result in significant improvement over the existing technology in India in any field and the investment in such technology involves high risk.'

[27][**Tax in the case of block assessment of search cases.**

113. The total undisclosed income of the block period, determined under section 158BC, shall be chargeable to tax at the rate of sixty per cent.]

Tax on capital gains in cases of assessees other than companies.

114. [*Omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and reintroduced with material modifications in section 80T. Section 114 was substituted first by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962 and later on amended by the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965 and the Finance Act, 1966, w.e.f. 1-4-1966.*]

Tax on capital gains in case of companies.

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

[29][**Tax on dividends, royalty and technical service fees in the case of foreign companies.**

[30]**115A.** [31][(1) Where the total income of—

(*a*) a non-resident (not being a company) or of a foreign company, includes any income by way of—

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27. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995. Earlier section 113 dealing with "Tax in the case of non-resident" was omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

28. Omitted section 115, 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, 1971, w.e.f. 1-4-1972, the Finance (No. 2) Act, 1974, w.e.f. 1-4-1975, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1985, w.e.f. 1-4-1986, stood as under :

'115. *Tax on capital gains in case of companies.*—Where the total income of a company includes any income chargeable under the head "Capital gains" relating to capital assets other than short-term capital assets (such income being hereinafter referred to as long-term capital gains), the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the amount of long-term capital gains included in the total income—

(*a*) on so much of the amount of such long-term capital gains as relate to buildings or lands or any rights in buildings or lands, at the rate of fifty per cent ; and

(*b*) on the balance of such long-term capital gains, if any, at the rate of forty per cent ; and

(*ii*) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of long-term capital gains referred to in clause (*i*).'

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

30. *See* also Circular No. 473, dated 29-10-1986 and Circular No. 740, dated 17-4-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

31. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to substitution, sub-section (1), as amended by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977/1-4-1978, the Finance Act, 1983, w.e.f. 1-6-1983, the Finance Act, 1986, w.e.f. 1-4-1987, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance Act, 1992, w.e.f. 1-6-1992, read as under :

'(1) Subject to the provisions of sub-sections (1A) and (2), where the total income of an assessee, being a foreign company, includes any income by way of—

(*a*) dividends ; or

(*aa*) interest received from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency ; or

(Contd. on p. 1.474)

(*i*) dividends [32][other than dividends referred to in section 115-O] ; or

(*ii*) interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency ; or

(*iii*) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India,

the income-tax payable shall be aggregate of—

(*A*) the amount of income-tax calculated on the amount of income by way of dividends [32][other than dividends referred to in section 115-O], if any, included in the total income, at the rate of twenty per cent ;

(*B*) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (*ii*), if any, included in the total income, at the rate of twenty per cent ;

(*C*) the amount of income-tax calculated on the income in respect of units referred to in sub-clause (*iii*), if any, included in the total income, at the rate of twenty per cent ; and

(*D*) the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the

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(Contd. from p. 1.473)

(*ab*) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10 ; or

(*b*) royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy,

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the amount of income by way of dividends, if any, included in the total income, at the rate of twenty-five per cent ;

(*ia*) the amount of income-tax calculated on the income, by way of interest referred to in clause (*aa*), if any, included in the total income, at the rate of twenty-five per cent ;

(*ib*) the amount of income-tax calculated on the income in respect of units referred to in clause (*ab*), if any, included in the total income, at the rate of twenty-five per cent ;

(*ii*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of thirty per cent ;

(*iii*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of thirty per cent ; and

(*iv*) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of income referred to in clause (*a*), clause (*aa*) and clause (*b*).

Explanation.—For the purposes of this section,—

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

(*b*) "foreign currency" shall have the same meaning as in the *Explanation* below item (*g*) of sub-clause (*iv*) of clause (*15*) of section 10 ;

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

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

amount of income referred to in sub-clause (*i*), sub-clause (*ii*) and sub-clause (*iii*) ;

(*b*) a foreign company, includes any income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy, then, subject to the provisions of sub-sections (1A) and (2), the income-tax payable shall be the aggregate of,—

[33][(*A*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of thirty per cent if such royalty is received in pursuance of an agreement made on or before the 31st day of May, 1997 and twenty per cent where such royalty is received in pursuance of an agreement made after the 31st day of May, 1997;

(*B*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of thirty per cent if such fees for technical services are received in pursuance of an agreement made on or before the 31st day of May, 1997 and twenty per cent where such fees for technical services are received in pursuance of an agreement made after the 31st day of May, 1997; and]

(*C*) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of income by way of royalty and fees for technical services.

Explanation.—For the purposes of this section,—

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

(*b*) "foreign currency" shall have the same meaning as in the *Explanation* below item (*g*) of sub-clause (*iv*) of clause (*15*) of section 10 ;

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

(*d*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963).]

[34][(1A) Where the royalty referred to in clause (*b*) of sub-section (1) is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book to an Indian concern [35][or in respect

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33. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, sub-clauses (*A*) and (*B*), read as under :

"(*A*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of thirty per cent ;

(*B*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of thirty per cent ; and"

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

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

of any computer software to a person resident in India], the provisions of sub-section (1) shall apply in relation to such royalty as if the words [36][37][the agreement is approved by the Central Government or where it relates to a matter] included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy] occurring in the said clause had been omitted :

Provided that such book is on a subject, the books on which are permitted, according to the Import Trade Control Policy of the Government of India for the period commencing from the 1st day of April, 1977, and ending with the 31st day of March, 1978, to be imported into India under an Open General Licence :

[38][**Provided further** that such computer software is permitted according to the Import Trade Control Policy of the Government of India for the time being in force to be imported into India under an Open General Licence.]

[39][*Explanation 1*].—In this sub-section, "Open General Licence" means an Open General Licence issued by the Central Government in pursuance of the Imports (Control) Order, 1955.]

[40][*Explanation 2*.—In this sub-section, the expression "computer software" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 80HHE.]

(2) Nothing contained in sub-section (1) shall apply in relation to any income by way of royalty received by a foreign company from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1976, if such agreement is deemed, for the [41][purposes of the first proviso] to clause (*vi*) of sub-section (1) of section 9, to have been made before the 1st day of April, 1976; and the provisions of the annual Finance Act for calculating, charging, deducting or computing income-tax shall apply in relation to such income as if such income had been received in pursuance of an agreement made before the 1st day of April, 1976.]

[42][(3) No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing his or its income referred to in sub-section (1).

(4) Where in the case of an assessee referred to in sub-section (1),—

(*a*) the gross total income consists only of the income referred to in clause (*a*) of that sub-section, no deduction shall be allowed to him or it under Chapter VI-A;

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36. Substituted for "and approved by the Central Government" by the Finance Act, 1992, w.e.f. 1-6-1992.

37. Substituted for "approved by the Central Government or where the agreement relates to a matter" by the Finance Act, 1994, w.e.f. 1-4-1995.

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

39. Renumbered, *ibid*.

40. Inserted, *ibid*.

41. Substituted for "purposes of the proviso", *ibid*.

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

(*b*) the gross total income includes any income referred to in clause (*a*) of that sub-section, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—

(*a*) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]

[43][**Tax on income from units purchased in foreign currency or capital gains arising from their transfer.**

115AB.(1) Where the total income of an assessee, being an overseas financial organisation (hereinafter referred to as Offshore Fund) includes—

(*a*) income received in respect of units purchased in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of units purchased in foreign currency,

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of units referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the Offshore Fund would have been chargeable had its total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

(2) Where the gross total income of the Offshore Fund,—

(*a*) consists only of income from units or income by way of long-term capital gains arising from the transfer of units, or both, no deduction shall be allowed to the assessee under sections 28 to 44C [44][***] or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A [45][and nothing contained in the provisions of the second proviso to section 48 shall apply to income referred to in clause (*b*) of sub-section (1)];

(*b*) includes any income referred to in clause (*a*), the gross total income shall be reduced by the amount of such income and the deduction

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

44. Words "or sub-section (2) of section 48" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

45. Inserted, *ibid.*

under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

Explanation.—For the purposes of this section,—

(*a*) "overseas financial organisation" means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a mutual fund specified under clause (*23D*) of section 10 and such arrangement is approved by the Central Government for this purpose;

(*b*) "unit" means unit of a mutual fund specified under clause (*23D*) of section 10 or of the Unit Trust of India;

(*c*) "foreign currency"[46] shall have the meaning as in the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*d*) "public sector bank" shall have the meaning assigned to it in clause (*23D*) of section 10;

(*e*) "public financial institution" shall have the meaning assigned to it in section 4A[47] of the Companies Act, 1956 (1 of 1956);

(*f*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)].

[48][**Tax on income from bonds or shares purchased in foreign currency or capital gains arising from their transfer.**

115AC. (1) Where the total income of an assessee, being a non-resident, includes—

(*a*) income by way of interest or dividends [49][other than dividends referred to in section 115-O], on bonds or shares of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette[50], specify in this behalf [51][or on bonds or shares of a public sector company, sold by the Government] and purchased by him in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of bonds or, as the case may be, shares referred to in clause (*a*),

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income by way of interest or dividends [52][other than dividends referred to in section 115-O], as

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46. For definition of "foreign currency", *see* footnote 35 on p. 1.62 *ante*.

47. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix One.**

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

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

50. Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme has been notified—Notification No. SO 1032(E), dated 24-12-1993. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

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

the case may be, in respect of bonds or shares referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the non-resident would have been chargeable had his total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

(2) Where the gross total income of the non-resident—

(*a*) consists only of income by way of interest or dividends [52a][other than dividends referred to in section 115-O] in respect of bonds or, as the case may be, shares referred to in clause (*a*) of sub-section (1), no deduction shall be allowed to him under sections 28 to 44C or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) of sub-section (1) the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the assessee.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being bonds or shares referred to in clause (*b*) of sub-section (1).

(4) It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]

The following sub-section (5) shall be inserted after sub-section (4) of section 115AC by the Finance Act, 1999, w.e.f. 1-4-2000 :

(5) Where the assessee acquired shares or bonds in an amalgamated or resulting company by virtue of his holding shares or bonds in the amalgamating or demerged company, as the case may be, in accordance with the provisions of sub-section (1), the provisions of the said sub-section shall apply to such shares or bonds.

The following section 115ACA shall be inserted after section 115AC by the Finance Act, 1999, w.e.f. 1-4-2000 :

Tax on income from Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.

115ACA. *(1) Where the total income of an assessee, being an individual, who is a resident and an employee of an Indian company engaged in informa-*

52a. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

tion technology software and information technology services (hereafter in this section referred to as the resident employee), includes—

(a) income by way of dividends, other than dividends referred to in section 115-O, on Global Depository Receipts of an Indian company engaged in information technology software and information technology services, issued in accordance with such employees' stock option scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf and purchased by him in foreign currency; or

(b) income by way of long-term capital gains arising from the transfer of Global Depository Receipts referred to in clause (a),

the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income by way of dividends, other than dividends referred to in section 115-O, in respect of Global Depository Receipts referred to in clause (a), if any, included in the total income, at the rate of ten per cent;

(ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, at the rate of ten per cent; and

(iii) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

(2) Where the gross total income of the resident employee—

(a) consists only of income by way of dividends, other than dividends referred to in section 115-O, in respect of Global Depository Receipts referred to in clause (a) of sub-section (1), no deduction shall be allowed to him under any other provision of this Act;

(b) includes any income referred to in clause (a) or clause (b) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under any provision of this Act shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being Global Depository Receipts referred to in clause (b) of sub-section (1).

Explanation.—*For the purposes of this section,—*

(a) "Global Depository Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company;

(b) "information technology service" means any service which results from the use of any information technology software over a system of information technology products for realising value addition;

(c) *"information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form and capable of being manipulated or providing inter-activity to a user, by means of an automatic data processing machine falling under heading information technology products but does not include non-information technology products;*

(d) *"Overseas Depository Bank" means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company.*

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[53][**Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer.**

115AD. (1) Where the total income of a Foreign Institutional Investor includes—

[54][(a) *income* [54a]**[***other than income by way of dividends referred to in section 115-O***]** *received in respect of securities (other than unit referred to in section 115AB); or*]

(*b*) income by way of short-term or long-term capital gains arising from the transfer of such securities,

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of securities referred to in clause (*a*), if any, included in the total income, at the rate of twenty per cent;

(*ii*) the amount of income-tax calculated on the income by way of short-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of thirty per cent;

(*iii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iv*) the amount of income-tax with which the Foreign Institutional Investor would have been chargeable had its total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

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

54. Substituted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Prior to its substitution, clause (*a*), as amended by the Finance Act, 1997, w.e.f. 1-4-1998, read as under :

"(*a*) income other than income by way of dividends referred to in section 115-O received in respect of securities (other than units referred to in section 115AB) listed in a recognised stock exchange in India in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder; or"

54a. Inserted by the Finance Act, 1999, w.e.f. **1-4-1999.**

(2) Where the gross total income of the Foreign Institutional Investor—

(*a*) consists only of income in respect of securities referred to in clause (*a*) of sub-section (1), no deduction shall be allowed to it under sections 28 to 44C or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the Foreign Institutional Investor.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of capital gains arising out of the transfer of securities referred to in clause (*b*) of sub-section (1).

Explanation.—For the purposes of this section,—

(*a*) the expression "Foreign Institutional Investor" means such investor as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(*b*) the expression "securities"[55] shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).]

[56][**Tax on profits and gains of life insurance business.**

115B. [57][(1)] Where the total income of an assessee includes any profits and gains from life insurance business, the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the amount of profits and gains of the life insurance business included in the total income, at the rate of twelve and one-half per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of profits and gains of the life insurance business.]

[58][(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force or any instrument having the force of law, the assessee shall, in addition to the payment of income-tax computed under sub-section (1), deposit, during [59][the previous years relevant to the assessment years commencing on the 1st day of April, 1989 and the 1st day of April, 1990], an amount equal to thirty-three and one-third per cent of the amount of income-tax computed under clause (*i*) of sub-section (1), in such social security fund (hereafter in this

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55. For definition of "security", *see* footnote 51 on p. 1.23 *ante*.

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

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

58. Inserted, *ibid.*

59. Substituted for "the previous year relevant to the assessment year commencing on the 1st day of April, 1989" by the Finance Act, 1989, w.e.f. 1-4-1990.

sub-section referred to as the security fund), as the Central Government may, by notification[60] in the Official Gazette, specify in this behalf :

Provided that where the assessee makes during the said previous [61][years] any deposit of an amount of not less than two and one-half per cent of the profits and gains of the life insurance business in the security fund, the amount of income-tax payable by the assessee under the said clause (*i*) shall be reduced by an amount equal to two and one-half per cent of such profits and gains and, accordingly, the deposit of thirty-three and one-third per cent required to be made under this sub-section shall be calculated on the income-tax as so reduced.]

[62][**Tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever.**

115BB. Where the total income of an assessee includes any income by way of winnings from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on income by way of winnings from such lottery or crossword puzzle or race including horse race or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, at the rate of forty per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*i*).

Explanation.—For the purposes of this section, "horse race" shall have the same meaning as in section 74A.]

[63][**Tax on non-resident sportsmen or sports associations.**

115BBA. (1) Where the total income of an assessee,—

(*a*) being a sportsman (including an athlete), who is not a citizen of India and is a non-resident, includes any income received or receivable by way of—

(*i*) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport; or

(*ii*) advertisement; or

(*iii*) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or

(*b*) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India,

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60. For notified Social Security Fund, *see* Taxmann's Master Guide to Income-tax Act.

61. Substituted for "year" by the Finance Act, 1989, w.e.f. 1-4-1990.

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

63. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

the income-tax payable by the assessee shall be the aggregate of—

(*i*) the amount of income-tax calculated on income referred to in clause (*a*) or clause (*b*) at the rate of ten per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred to in clause (*a*) or clause (*b*) :

Provided that no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in clause (*a*) or clause (*b*).

(2) It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) or clause (*b*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]

[64][*CHAPTER XII-A*

SPECIAL PROVISIONS RELATING TO CERTAIN INCOMES OF NON-RESIDENTS

Definitions.

115C. In this Chapter, unless the context otherwise requires,—

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

(*b*) "foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange;

(*c*) "investment income" means any income derived [65][other than dividends referred to in section 115-O] from a foreign exchange asset;

(*d*) "long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset;

(*e*) "non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".

Explanation.—A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India;

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64. Chapter XII-A, consisting of sections 115C, 115D, 115E, 115F, 115G, 115H and 115-I, inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

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

(*f*) "specified asset" means any of the following assets, namely :—

(*i*) shares in an Indian company;

(*ii*) debentures issued by an Indian company which is not a private company[66] as defined in the Companies Act, 1956 (1 of 1956);

(*iii*) deposits with an Indian company which is not a private company[66] as defined in the Companies Act, 1956 (1 of 1956);

(*iv*) any security of the Central Government as defined in clause (*2*) of section 2[67] of the Public Debt Act, 1944 (18 of 1944);

(*v*) such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

Special provision for computation of total income of non-residents.

115D. (1) No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the investment income of a non-resident Indian.

(2) Where in the case of an assessee, being a non-resident Indian,—

(*a*) the gross total income consists only of investment income or income by way of long-term capital gains or both, no deduction shall be allowed to the assessee [68][under Chapter VI-A and nothing contained in the provisions of the second proviso to section 48 shall apply to income chargeable under the head "Capital gains"];

(*b*) the gross total income includes any income referred to in clause (*a*), the gross total income shall be reduced by the amount of such income and the deductions under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

[69][**Tax on investment income and long-term capital gains.**

115E. Where the total income of an assessee, being a non-resident Indian, includes—

(*a*) any income from investment or income from long-term capital gains of an asset other than a specified asset;

(*b*) income by way of long-term capital gains,

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

67. For definition of "Government security" *see* footnote 43 on page 1.428 *ante*.

68. Substituted for "under sub-section (2) of section 48 or under Chapter VI-A" by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier these words were substituted for "under Chapter VI-A" by the Direct Tax Laws (Second Amendment) Act, 1989, w.r.e.f. 1-4-1988.

69. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, section 115E, as amended by the Finance Act, 1985, w.e.f. 1-4-1986, read as under :
"115E. *Tax on investment income and long-term capital gains.*—(1) Where the total income of an assessee, being a non-resident Indian, consists only of investment income or income by way of long-term capital gains or both, the tax payable by him on his total income shall be the amount of income-tax calculated on such total income at the rate of twenty per cent of such income.

(Contd. on p. 1.486)

the tax payable by him shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of investment income referred to in clause (*a*), if any, included in the total income, at the rate of twenty per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which he would have been chargeable had his total income been reduced by the amount of income referred to in clauses (*a*) and (*b*).]

Capital gains on transfer of foreign exchange assets not to be charged in certain cases.

115F. (1) Where, in the case of an assessee being a non-resident Indian, any long-term capital gains arise from the transfer of a foreign exchange asset (the asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, within a period of six months after the date of such transfer, invested [70][***] the whole or any part of the net consideration in any specified asset [71][***], or in any savings certificates referred to in clause (*4B*), of section 10 (such specified asset [72][***], or such savings certificates being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45.

(Contd. from p. 1.485)

(2) Where the total income of an assessee, being a non-resident Indian includes any income of the nature referred to in sub-section (1), the tax payable by him on his total income shall be—

(*i*) the income-tax payable by him in accordance with the provisions of sub-section (1) on income of the nature referred to in that sub-section included in the total income; *plus*

(*ii*) the amount of income-tax chargeable on the total income as reduced by the amount of income of the nature referred to in sub-section (1), had the total income so reduced been his total income."

70. "or deposited" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

71. "or in an account referred to in clause (*4A*)" omitted, *ibid.*

72. "or such deposit in the account aforesaid" omitted, *ibid.*

Explanation.—For the purposes of this sub-section,—

(*i*) "cost", in relation to any new asset, being a deposit [73][***] referred to in sub-clause (*iii*), or specified under sub-clause (*v*), of clause (*f*) of section 115C, means the amount of such deposit;

(*ii*) "net consideration", in relation to the transfer of the original asset, means the full value of the consideration received or accruing as a result of the transfer of such asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the new asset is transferred or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to capital assets other than short-term capital assets of the previous year in which the new asset is transferred or converted (otherwise than by transfer) into money.

Return of income not to be filed in certain cases.

115G. It shall not be necessary for a non-resident Indian to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Benefit under Chapter to be available in certain cases even after the assessee becomes resident.

115H. Where a person, who is a non-resident Indian in any previous year, becomes assessable as resident in India in respect of the total income of any subsequent year, he may furnish to the [74][Assessing] Officer a declaration in writing along with his return of income under section 139 for the assessment year for which he is so assessable, to the effect that the provisions of this Chapter shall continue to apply to him in relation to the investment income derived from any foreign exchange asset being an asset of the nature referred to in sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*f*) of section 115C; and if he does so, the provisions of this Chapter shall continue to apply to him in relation to such income for that assessment year and for every subsequent assessment year until the transfer or conversion (otherwise than by transfer) into money of such assets.

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73. "referred to in clause (*4A*) of section 10 or" omitted, *ibid.*

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

Chapter not to apply if the assessee so chooses.

115-I. A non-resident Indian may elect not to be governed by the provisions of this Chapter for any assessment year by furnishing [75][his return of income for that assessment year under section 139 declaring therein] that the provisions of this Chapter shall not apply to him for that assessment year and if he does so, the provisions of this Chapter shall not apply to him for that assessment year and his total income for that assessment year shall be computed and tax on such total income shall be charged in accordance with the other provisions of this Act.]

[76][***CHAPTER XII-B***

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

Special provisions relating to certain companies.

115J. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company [77][(other than a company engaged in the business of generation or distribution of electricity)], the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 [78][but before the 1st day of April, 1991] (hereafter in this section referred to as the relevant previous year), is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

[79][(1A) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).]

Explanation.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year [80][prepared under sub-section (1A)], as increased by—

(*a*) the amount of income-tax paid or payable, and the provision therefor; or

(*b*) the amounts carried to any reserves [81][(other than the reserves specified in section 80HHD [82][or sub-section (1) of section 33AC])], by whatever name called; or

(*c*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

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75. Substituted for "to the Assessing Officer his return of income for that assessment year under section 139 together with a declaration in writing to the effect" by the Finance Act, 1990, w.e.f. 1-4-1990.

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

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

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

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

80. Substituted for "prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956)" by the Finance Act, 1989, w.e.f. 1-4-1989.

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

82. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

(*d*) the amount by way of provision for losses of subsidiary companies; or

(*e*) the amount or amounts of dividends paid or proposed; or

(*f*) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III [83][applies; or]

[84][(*g*) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (4) of that section; or

(*h*) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the period specified in sub-section (4) of that section;]

[85][(*ha*) the amount deemed to be the profits under sub-section (3) of section 33AC;]

[86][if any amount referred to in clauses (*a*) to (*f*) is debited or, as the case may be, the amount referred to in clauses (*g*) and (*h*) is not credited] to the profit and loss account, and as reduced by,—

(*i*) the amount withdrawn from reserves [87][(other than the reserves specified in section 80HHD)] or provisions, if any such amount is credited to the [88][profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation;* or]

(*ii*) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

[89][(*iii*) the amounts [as arrived at after increasing the net profit by the amounts referred to in clauses (*a*) to (*f*) and reducing the net profit by the amounts referred to in clauses (*i*) and (*ii*)] attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be; or]

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83. Substituted for "applies" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

84. Inserted, *ibid*.

85. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

86. Substituted for "if any such amount is debited" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

87. Inserted, *ibid*.

88. Substituted for "profit and loss account; or" by the Finance Act, 1989, w.r.e.f. 1-4-1988.

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

[90][(*iv*)] the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (*b*) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J.]

[91][**Deemed income relating to certain companies.**

115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the1st day of April, 1997 (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI[92] to the Companies Act, 1956 (1 of 1956):

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(*a*) the amount of income-tax paid or payable, and the provision therefor; or

(*b*) the amounts carried to any reserves by whatever name called; or

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

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

92. For text of Parts II and III of Schedule VI to the Companies Act, 1956, *see* **Appendix One.**

(*c*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(*d*) the amount by way of provision for losses of subsidiary companies; or

(*e*) the amount or amounts of dividends paid or proposed; or

(*f*) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

if any amount referred to in clauses (*a*) to (*f*) is debited to the profit and loss account, and as reduced by,—

(*i*) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation*; or

(*ii*) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause, the loss shall not include depreciation; or

(*iv*) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(*v*) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in [92a]**[***sub-clause (b) or sub-clause (c) of clause (iv) of sub-section (2) of section 80-IA***]**, for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the [92b]**[***profits and gains under sub-section (5) of section 80-IA***]**; or

(*vi*) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined [92c]**[***under sub-section (12) of section 80-IA, and subject to fulfilling the conditions laid down in sub-section (4A) of section 80-IA***]**; or

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92a. Words "sub-section (4) and sub-section (5) of section 80-IB" shall be substituted for "sub-clause (*b*) or sub-clause (*c*) of clause (*iv*) of sub-section (2) of section 80-IA" by the Finance Act, 1999, w.e.f. **1-4-2000.**

92b. Words "profits and gains under sub-section (4) or sub-section (5) of section 80-IB" shall be substituted for "profits and gains under sub-section (5) of section 80-IA", *ibid.*

92c. Words "as defined in the *Explanation* to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section" shall be substituted for "under sub-section (12) of section 80-IA, and subject to fulfilling the conditions laid down in sub-section (4A) of section 80-IA", *ibid.*

(*vii*) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (*ga*)[93] of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); [94][or]

[94][(*viii*) the amount of profits eligible for deduction under section 80HHC, computed under clause (*a*), (*b*) or (*c*) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that section;

(*ix*) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.]

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.]

[95][**Tax credit in respect of tax paid on deemed income relating to certain companies.**

115JAA. (1) Where any amount of tax is paid under sub-section (1) of section 115JA by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act :

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-section (4) and sub-section (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

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93. For definition of "net worth", *see* footnote 94 on p. 1.142.

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

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

(4) The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than section 115JA.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of section 115JA for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of section 143, section 144, section 147, section 154, section 155, sub-section (4) of section 245D, section 250, section 254, section 260, section 262, section 263 or section 264, the amount of tax payable under this Act is reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.]

CHAPTER XII-C

SPECIAL PROVISIONS RELATING TO RETAIL TRADE, ETC.

[*Chapter XII-C, consisting of sections 115K to 115N, omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Earlier Chapter XII-C was inserted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Special provision for computation of income in certain cases.

115K. [96][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

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96. Prior to its omission, section 115K, 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. 1-4-1993/1-4-1994, the Finance Act, 1994, w.e.f. 1-4-1995, the Finance Act, 1995, w.e.f. 1-4-1996 and the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

'115K. *Special provision for computation of income in certain cases.*—(1) Notwithstanding anything contained in any other provision of this Act relating to the computation of income chargeable under the head "Profits and gains of business or profession", in the case of any person, to whom this section applies and who is—

(*a*) carrying on the business of retail trade in any goods or merchandise; or

(*b*) carrying on the business of running an eating place or of operating, hiring or leasing a motor cab, a maxicab or a three-wheeled motor vehicle or any other business as may be prescribed; or

(*c*) engaged in any vocation,

and submits a statement in accordance with the provisions of sub-section (4), a sum of forty-nine thousand three hundred and thirty rupees shall be deemed to be the profits and gains of such person from such business or vocation.

(2) The provisions of sub-section (1) shall apply to any person, being an individual or a Hindu undivided family, where—

(*a*) such person has not been assessed to income-tax for any assessment year commencing on or before the 1st day of April, 1992;

(*b*) in the case of person referred to in—

(*i*) clause (*a*) of sub-section (1), his turnover from the business of retail trade during the relevant previous year does not exceed seven lakh rupees and his income from such business during that year does not exceed forty-nine thousand three hundred and thirty rupees;

(Contd. on p. 1.494)

(Contd. from p. 1.493)

(*ii*) clause (*b*) or clause (*c*) of sub-section (1), his income from the said business or vocation, during the relevant previous year does not exceed forty-nine thousand three hundred and thirty rupees; and

(*c*) such person does not have any income, in excess of five thousand rupees in the aggregate, chargeable to tax from any source falling under any head of income other than the income from the business or vocation referred to in clause (*a*), clause (*b*) or, as the case may be, clause (*c*) of sub-section (1) during the relevant previous year.

(3) Any person to whom this section applies shall be liable to pay tax, at the rate specified in the Finance Act of the relevant year for computing advance tax, on the income deemed under sub-section (1) and the other income referred to in clause (*c*) of sub-section (2).

(4) Every statement referred to in sub-section (1) shall—

(*a*) be in the prescribed form†, contain the name of such person, his address, nature of business or vocation and a declaration by him that,—

(*i*) where he is carrying on the business of retail trade, his turnover from such trade during the relevant previous year does not exceed seven lakh rupees and his income from such trade during that year does not exceed forty-nine thousand three hundred and thirty rupees;

(*ii*) where he is carrying on the business or vocation referred to in clause (*b*) or, as the case may be, clause (*c*) of that sub-section, his income during the relevant previous year from such business or vocation does not exceed forty-nine thousand three hundred and thirty rupees,

and such statement shall also be verified in the prescribed manner;

(*b*) be submitted on or before the 31st day of March of the relevant previous year along with the proof of payment of the amount of tax referred to in sub-section (3).

Explanation.—For the purposes of this section,—

(*a*) the expressions "motor cab", "maxicab" and "motor vehicle" shall have the meanings respectively assigned to them in section2†† of the Motor Vehicles Act, 1988 (59 of 1988);

(*b*) "vocation" includes tailoring, hair-cutting, clothes' washing, typing, photo-copying, repair work of any kind and other services of a similar nature.'

†*See* rule 11EE and Form No. 4A for statement, in duplicate, to be furnished under section 115K by individual/HUF.

††Clauses (*22*), (*25*) and (*28*) of section 2 of the Motor Vehicles Act, 1988, define "maxicab", "motor cab" and "motor vehicle", respectively, as follows :

'(*22*) "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

(*25*) "motor cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

(*28*) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;'

Return of income not to be filed in certain cases.

115L. [97][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

Special provision for disallowance of deductions and rebate of income.

115M. [98][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

Bar of proceedings in certain cases.

115N. [99][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

[1][*CHAPTER XII-D*

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

Tax on distributed profits of domestic companies.

115-O. (1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of June, 1997, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of ten per cent.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

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97. Prior to its omission, section 115L, as inserted by the Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"115L. *Return of income not to be filed in certain cases.*—Subject to the provisions of section 115N, a person who has submitted a statement under sub-section (1) of section 115K shall not be required to furnish a return of income under sub-section (1) of section 139 and the other provisions of Chapter XIV will not apply in his case."

98. Prior to its omission, section 115M, as inserted by the Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"115M. *Special provision for disallowance of deductions and rebate of income-tax.*—No deduction under Chapter VI-A (except section 80L) or rebate of income-tax under Chapter VIII shall be allowed in the case of a person who has submitted a statement under sub-section (1) of section 115K."

99. Prior to its omission, section 115N, 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. 1-4-1993 and the Finance Act, 1994, w.e.f. 1-4-1995, read as under :

"115N. *Bar of proceedings in certain cases.*—No proceeding under any other Chapter of this Act shall be initiated against any person who has submitted a statement under sub-section (1) of section 115K for the relevant assessment year unless the Deputy Commissioner, in consequence of evidence in his possession, has reason to believe that the statement furnished by any person under section 115K is untrue."

1. Chapter XII-D, consisting of sections 115-O to 115Q, inserted by the Finance Act, 1997, w.e.f. 1-6-1997.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of—

(*a*) declaration of any dividend; or

(*b*) distribution of any dividend; or

(*c*) payment of any dividend,

whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

Interest payable for non-payment of tax by domestic companies.

115P. Where the principal officer of a domestic company and the company fails to pay the whole or any part of the tax on distributed profits referred to in sub-section (1) of section 115-O, within the time allowed under sub-section (3) of that section, he or it shall be liable to pay simple interest at the rate of two per cent for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

When company is deemed to be in default.

115Q. If any principal officer of a domestic company and the company does not pay tax on distributed profits in accordance with the provisions of section 115-O, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.—For the purposes of this Chapter, the expression "dividends" shall have the same meaning as is given to "dividend" in clause (*22*) of section 2 but shall not include sub-clause (*e*) thereof.]

[1a][*CHAPTER XII-E*

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME

Tax on distributed income to unit holders.

115R. *(1) Notwithstanding anything contained in any other provisions of this Act and section 32 of the Unit Trust of India Act, 1963 (52 of 1963), any amount of income distributed by the Unit Trust of India to its unit holders shall be chargeable to tax and the Unit Trust of India shall be liable to pay additional income-tax on such distributed income at the rate of ten per cent :*

1a. Chapter XII-E, consisting of sections 115R to 115T, inserted by the Finance Act, 1999, w.e.f. **1-6-1999.**

Provided *that nothing contained in this sub-section shall apply in respect of any income distributed to a unit holder of open-ended equity oriented funds in respect of any distribution made from such fund for a period of three years commencing from the 1st day of April, 1999.*

(2) Notwithstanding anything contained in any other provisions of this Act, any amount of income distributed by a Mutual Fund to its unit holders shall be chargeable to tax and such Mutual Fund shall be liable to pay additional income-tax at the rate of ten per cent :

Provided *that nothing contained in this sub-section shall apply in respect of any income distributed to a unit holder of open-ended equity oriented funds in respect of any distribution made from such fund for a period of three years commencing from the 1st day of April, 1999.*

(3) The person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, shall be liable to pay tax to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier.

(4) No deduction under any other provision of this Act shall be allowed to the Unit Trust of India or to a Mutual Fund in respect of the income which has been charged to tax under sub-section (1) or sub-section (2).

Interest payable for non-payment of tax.

115S. *Where the person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, fails to pay the whole or any part of the tax referred to in sub-section (1) or sub-section (2) of section 115R, within the time allowed under sub-section (3) of that section, he or it shall be liable to pay simple interest at the rate of two per cent every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.*

Unit Trust of India or Mutual Fund to be assessee in default.

115T. *If any person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, does not pay tax, as is referred to in sub-section (1) or sub-section (2) of section 115R, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.*

Explanation.—*For the purposes of this Chapter,—*

(a) *"Mutual Fund" means a Mutual Fund specified under clause (*23D*) of section 10;*

(b) *"open-ended equity oriented fund" means—*

(i) *the Unit Scheme, 1964 made by the Unit Trust of India; and*

(ii) *such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent of the total proceeds of such fund:*

Provided *that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;*

(c) *"Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963).***]**

CHAPTER XIII

INCOME-TAX AUTHORITIES

A.—Appointment and control

[2][**Income-tax authorities.**

116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),

(*b*) Directors-General of Income-tax or Chief Commissioners of Income-tax,

(*c*) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),

[3][(*cc*) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),]

[4][(*cca*) Joint Directors of Income-tax or Joint Commissioners of Income-tax,]

(*d*) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),

(*e*) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,

(*f*) Income-tax Officers,

(*g*) Tax Recovery Officers,

(*h*) Inspectors of Income-tax.]

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2. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was amended by the Central Boards of Revenue Act, 1963, w.e.f. 1-1-1964, the Finance Act, 1970, w.e.f. 1-4-1970 and the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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

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