(*iv*) "annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government ;

(*v*) "capital charge" means a charge to secure the discharge of a liability of a capital nature ;

(*vi*) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

D.—Profits and gains of business or profession

Profits and gains of business or profession.

[52]**28.** [53]The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(*i*) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year ;

(*ii*) any compensation or other payment due to or received by,—

(*a*) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(*b*) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(*c*) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

[54][(*d*) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business ;]

(*iii*) income derived by a trade, professional or similar association from specific services performed for its members ;

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52. *See* also Press Note, dated 9-10-1952, issued by the Ministry of Finance, Instruction No. 971 [F.No. 228/12/76-IT (A-II)], dated 8-7-1976, Circular No. 1 (XLVII-12), dated 16-1-1962, Circular No. 35-D(XLVII-20), dated 24-11-1965, Circular No. 25, SIA Series, dated 20-10-1975, Circular No. 599, dated 24-4-1991, Circular No. 665, dated 5-10-1993, Circular No. 742, dated 2-5-1996 (as amended by Circular No. 765, dated 15-4-1998) and Letter dated 12-3-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

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

[55][(*iiia*) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947) ;]

[56][(*iiib*) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;]

[57][(*iiic*) any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;]

[58][(*iv*) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession ;]

[59][(*v*) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm :

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (*b*) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;]

[60][(*vi*) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (*10D*) of section 10.]

Explanation 1.—[61][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

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55. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1962.

56. Inserted, *ibid.*, w.r.e.f. 1-4-1967.

57. Inserted, *ibid.*, w.r.e.f. 1-4-1972.

58. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

59. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier clause (*v*) was inserted by the Direct Tax Laws (Amdt.) Act, 1987, w.e.f. 1-4-1989 and was omitted by the Direct Tax Laws (Amdt.) Act, 1989, with effect from the same date.

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

61. Prior to its omission, *Explanation 1* read as under :

"*Explanation 1.*—The profits and gains of a business shall include the profits and gains of managing agency."

Income from profits and gains of business or profession, how computed.

[62]**29.** [63]The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to [64][43D].

Rent, rates, taxes, repairs and insurance for buildings.

[63]**30.** In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(*a*) where the premises are occupied by the assessee—

(*i*) as a tenant, the rent paid for such premises ; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs ;

(*ii*) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ;

(*b*) any sums paid on account of land revenue, local rates or municipal taxes ;

(*c*) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

Repairs and insurance of machinery, plant and furniture.

[65]**31.** [66]In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(*i*) the amount paid on account of current repairs thereto ;

(*ii*) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.

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62. *See* also Press Note, dated 9-10-1952, issued by the Ministry of Finance, Instruction No. 971 [F.No. 228/12/76-IT(A-II)], dated 8-7-1976, Circular No. 1 (XLVII-12), dated 16-1-1962, Circular No. 35-D(XLVII-20), dated 24-11-1965, Circular No. 25, SIA 1975 series dated 20-10-1975 and Circular No. 742, dated 2-5-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

64. Substituted for "43C" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier "43C" was substituted for "43B" by the Finance Act, 1988, w.e.f. 1-4-1988. "43B" was substituted for "43A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and "43A" was substituted for "43" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

65. *See* also Circular No. 26-D(XLVI-22), dated 10-10-1966. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

Depreciation.

[67]**32.** (1) [68][*In respect of depreciation of—*

(i) *buildings, machinery, plant or furniture, being tangible assets;*

(ii) *know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,*

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—]

[69][(*i*) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed[70];]

(*ii*) [71][in the case of any block of assets, such percentage on the written down value thereof as may be prescribed[72]] :

[73][***]

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67. *See* also Circular No. 9, dated 23-3-1943, Circular No. 29-D(XIX-14), dated 31-8-1965, Letter [F.No. 10/14/66-IT(A-I)], dated 12-12-1966, Letter [F.No. 10/47/68-IT(A-II)], dated 17-7-1968, read with Letter dated 21-6-1968, Circular No. 609, dated 29-7-1991, Circular No. 622, dated 6-1-1992 and Circular No. 652, dated 14-6-1993. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

68. Substituted for the opening portion beginning with the words "In respect of depreciation of buildings, machinery, plant or furniture owned, wholly or partly," and ending with the words and figures "section 34, be allowed—" by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Prior to its substitution the quoted portion, as amended by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

"In respect of depreciation of buildings, machinery, plant or furniture owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed—"

69. Inserted by the Income-tax (Amendment) Act, 1998, w.e.f. 1-4-1998. Earlier, original clause (*i*) was substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later on omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

70. *See* rule 5(1A) and Appendix IA.

71. Substituted for "in the case of buildings, machinery, plant or furniture, other than ships covered by clause (*i*), such percentage on the written down value thereof as may in any case or class of cases be prescribed :" by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

72. *See* rule 5(1) and Appendix I. *See* also **Appendix Two** for procedure for claiming higher depreciation.

73. First proviso omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, first proviso, as inserted by the Finance Act, 1966, w.e.f. 1-4-1966 and amended by the Finance Act, 1983, w.e.f. 1-4-1984, read as under :

"**Provided** that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession :"

[74][**Provided** [75][***] that no deduction shall be allowed under this clause in respect of—

(*a*) any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975, unless it is used—

(*i*) in a business of running it on hire for tourists ; or

(*ii*) outside India in his business or profession in another country ; and

(*b*) any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42 :]

[76][**Provided further** that where an asset referred to in clause (*i*) or clause (*ii*), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (*i*) or clause (*ii*), as the case may be :]

[77]**[Provided also** *that where an asset being commercial vehicle is acquired by the assessee on or after the 1st day of October, 1998 but before the 1st day of April, 1999 and is put to use before the 1st day of April, 1999 for the purposes of business or profession, the deduction in respect of such asset shall be allowed on such percentage on the written down value thereof as may be prescribed.*

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

(a) *the expression "commercial vehicle" means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi-cab", "motor-cab", "tractor" and "road-roller";*

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74. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to its substitution, second proviso, as inserted by the Finance Act, 1975, w.e.f. 1-4-1975 and amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, read as under :

"**Provided further** that no deduction shall be allowed under this clause in respect of any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 and is used otherwise than in a business of running it on hire for tourists :"

75. Word "further" omitted by the Finance Act, 1995, w.e.f. 1-4-1996.

76. Substituted by the Income-tax (Amendment) Act, 1998, w.e.f. 1-4-1998. Prior to its substitution, second proviso, as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992 and later on amended by the Finance Act, 1995, w.e.f. 1-4-1996, read as under :

"**Provided further** that where any asset falling within a block of assets is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this clause in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed under this clause in the case of block of assets comprising such asset :"

77. Inserted by the Income-tax (Second Amendment) Act, 1998, w.e.f. **1-4-1999.**

(b) *the expressions "heavy goods vehicle"* [78], *"heavy passenger motor vehicle"* [79], *"light motor vehicle"* [79], *"medium goods vehicle"* [79], *"medium passenger motor vehicle"* [79], *"maxi-cab"* [80], *"motor-cab"* [80], *"tractor"* [79] *and "road roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988).***]**

[81][**Provided also** that, in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1991, the deduction in relation to any block of assets under this clause shall, in the case of a company, be restricted to seventy-five per cent of the amount calculated at the percentage, on the written down value of such assets, prescribed under this Act immediately before the commencement of the Taxation Laws (Amendment) Act, 1991:]

[82][**Provided also** that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture [83][, *being tangible asset or know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets*] allowable to the predecessor and the successor in the case of succession, referred to in [84][*clause (*xiii*) and clause (*xiv*) of section 47 or*] section 170 or the amalgamating company and the amalgamated company in the case of amalgamation, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation

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78. For definition of "heavy goods vehicle", *see* footnote 41 on p. 1.258 *post.*

79. Clauses (*17*), (*21*), (*23*), (*24*), and (*44*) of section 2 of the Motor Vehicles Act, 1988, define "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle" and "tractor", respectively, as follows :

'(*17*) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

** ** **

(*21*) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7,500 kilograms;

** ** **

(*23*) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

(*24*) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;

** ** **

(*44*) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;'

80. For definitions of "maxi-cab" and "motor-cab", *see* footnote 96 on p.1.494 *post.*

81. Inserted by the Taxation Laws (Amendment) Act, 1991, w.e.f. 15-1-1991.

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

83. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

84. Inserted, *ibid.*

had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, as the case may be, in the ratio of the number of days for which the assets were used by them.]

The following fifth proviso shall be substituted for the existing fifth proviso to clause (ii) of sub-section (1) of section 32 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Provided also *that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (*xiii*) and clause (*xiv*) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.*

[85][*Explanation 1.*—Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

Explanation 2.—For the purposes of this clause "written down value of the block of assets" shall have the same meaning as in clause *(*c*) of sub-section †(6) of section 43.]

[86][Explanation 3.—*For the purposes of this sub-section, the expressions "assets" and "block of assets" shall mean—*

(a) *tangible assets, being buildings, machinery, plant or furniture;*

(b) *intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature.*

85. Inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

86. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

*Should be read as 'sub-clause'.

†Should be read as 'clause'.

Explanation 4.—*For the purposes of this sub-section, the expression "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto);*]

[87](*iia*) [***]

[88][(*iii*) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (*i*) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purposes of this clause,—

(*1*) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

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87. Omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*iia*), as inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, stood as under :

'(*iia*) in the case of any new machinery or plant (other than ships and aircraft) which has been installed after the 31st day of March, 1980, but before the 1st day of April, 1985, a further sum equal to one-half of the amount admissible under clause (*ii*) (exclusive of extra allowance for double or multiple shift working of the machinery or plant and the extra allowance in respect of machinery or plant installed in any premises used as a hotel) in respect of the previous year in which such machinery or plant is installed or, if the machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year :

Provided that no deduction shall be allowed under this clause in respect of—

(*a*) any machinery or plant installed in any office premises or any residential accommodation ;

(*b*) any office appliances or road transport vehicles ; and

(*c*) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

Explanation.—For the purposes of this clause,—

(*a*) "new machinery or plant" shall have the meaning assigned to it in clause (2) of the *Explanation* below clause (*vi*) of this sub-section ;

(*b*) "residential accommodation" includes accommodation in the nature of a guest house but does not include premises used as a hotel ;'

88. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998. Earlier original clause (*iii*) was amended by the Finance Act, 1966, w.e.f. 1-4-1966 and the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and later on omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold,

so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (*1*) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(*2*) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company.]

[89](*iv*) [***]

[90](*v*) [***]

[91](*vi*) [***]

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89. Clause (*iv*) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*iv*), as amended by the Finance Act, 1983, w.e.f. 1-4-1984, the Finance Act, 1978, w.e.f. 1-4-1979, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1966, w.e.f. 1-4-1966, stood as under :

'(*iv*) in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and the income of each such person chargeable under the head "Salaries" is ten thousand rupees or less, or where the building is used solely or mainly for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, a sum equal to forty per cent of the actual cost of the building to the assessee in respect of the previous year of erection of the building ;'

90. Clause (*v*) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*v*), as inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and later amended by the Finance Act, 1983, w.e.f. 1-4-1984, stood as under :

"(*v*) in the case of any new building, the erection of which is completed after the 31st day of March, 1967, where the building is owned by an Indian company and used by such company as a hotel and such hotel is for the time being approved in this behalf by the Central Government, a sum equal to twenty-five per cent of the actual cost of erection of the building to the assessee, in respect of the previous year in which the erection of the building is completed or, if such building is first brought into use as a hotel in the immediately succeeding previous year, then in respect of that previous year ;"

91. Clause (*vi*) was omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*vi*), as inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975 and later amended by the Finance Act, 1976, w.e.f. 1-4-1976, stood as under :

'(*vi*) in the case of a new ship or a new aircraft acquired after the 31st day of May, 1974, by an assessee engaged in the business of operation of ships or aircraft or in the case of new machinery or plant (other than office appliances or road transport vehicles)

(Contd. on p. 1.140)

(1A) [92][***]

(Contd. from p. 1.139)

installed after that date for the purposes of business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in items 1 to 24 (both inclusive) in the list in the Ninth Schedule or in the case of new machinery or plant (other than office appliances or road transport vehicles) installed after that date in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things, a sum equal to twenty per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee, in respect of the previous year in which the ship or aircraft is acquired or the machinery or plant is installed, or if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year ; but any such sum shall not be deductible in determining the written down value for the purposes of clause (*ii*) :

Provided that the assessee may, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139, whether fixed originally or on extension, for furnishing the return of income for the assessment year in respect of which he first becomes entitled to deduction under this clause, furnish to the Income-tax Officer a declaration in writing that the provisions of this clause shall not apply to him, and if he does so, the provisions of this clause shall not apply to him, for that assessment year and for every subsequent assessment year ; so, however, that the assessee may, by notice in writing furnished to the Income-tax Officer before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139, whether fixed originally or on extension, for furnishing the return of income for any such subsequent assessment year, revoke his declaration and upon such revocation, the provisions of this clause shall apply to the assessee for that subsequent assessment year and for every assessment year thereafter :

Provided further that no deduction shall be allowed under this clause in respect of—

(*a*) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house,

(*b*) any ship, aircraft, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33, and

(*c*) any ship or aircraft acquired after the 31st day of March, 1976, or any machinery or plant installed after that date.

Explanation.—For the purposes of this clause,—

(*1*) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India ;

(*2*) "new machinery or plant" includes machinery or plant which before its installation by the assessee was used outside India by any other person, if the following conditions are fulfilled, namely :—

(*a*) such machinery or plant was not, at any time previous to the date of such installation by the assessee, used in India ;

(*b*) such machinery or plant is imported into India from any country outside India ; and

(*c*) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee ;

(Contd. on p. 1.141)

[93][(2) Where in the assessment of the assessee full effect cannot be given to any allowance under clause (*ii*) of sub-section (1) in any previous year owing to there being no profits or gains chargeable for that previous year or owing to the profits or gains being less than the allowance, then, the allowance or the part of allowance to which effect has not been given (hereinafter referred to as unabsorbed depreciation allowance), as the case may be,—

(*i*) shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;

(*ii*) if the unabsorbed depreciation allowance cannot be wholly set off under clause (*i*), the amount not so set off shall be set off from the income under any other head, if any, assessable for that assessment year;

(*iii*) if the unabsorbed depreciation allowance cannot be wholly set off under clause (*i*) and clause (*ii*), the amount of allowance not so set off shall be carried forward to the following assessment year and—

(*a*) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;

(*b*) if the unabsorbed depreciation allowance cannot be wholly so set

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(Contd. from p. 1.140)

(*3*) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant installed, as on the last day of the previous year, for the purposes of the business of the undertaking does not exceed seven hundred and fifty thousand rupees ; and for this purpose the value of any machinery or plant shall be,—

(*a*) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee ; and

(*b*) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.'

92. Sub-section (1A) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (1A) was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

93. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Prior to its substitution, sub-section (2), as amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, and Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"(2) Where, in the assessment of the assessee, full effect cannot be given to any allowance under clause (*ii*) of sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years."

off, the amount of unabsorbed depreciation allowance not so set off shall be carried forward to the following assessment year not being more than eight assessment years immediately succeeding the assessment year for which the aforesaid allowance was first computed :

Provided that the business or profession for which the allowance was originally computed continued to be carried on by him in the previous year relevant for that assessment year :

Provided further that the time limit of eight assessment years specified in sub-clause (*b*) shall not apply in the case of a company for the assessment year beginning with 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 relevant to the previous year in 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*) of sub-section (1) of section 3[94] of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).]

[95][**Investment allowance.**[96]

[97]**32A.** (1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee :

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94. Clause (*ga*) of section 3(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, defines "net worth" as follows :

'(*ga*) "net worth" means the sum total of the paid-up capital and free reserves.

Explanation.—For the purposes of this clause, "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation;'

95. Inserted by the Finance Act, 1976, w.e.f. 1-4-1976.

96. *Vide* Notification No. SO 233(E), dated 19-3-1990, no investment allowance shall be allowed in respect of any new ship or aircraft acquired or any new machinery or plant installed after 31-3-1990. For details, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, p. 1.502.

97. *See* also Circular No. 305, dated 12-6-1981, Circular No. 324, dated 3-2-1982, Circular No. 314, dated 17-9-1981 and PIB Press Release, dated 23-10-1989. For details, *see* Taxmann's Master Guide to Income-tax Act.

[98][**Provided** that in respect of a ship or an aircraft or machinery or plant specified in sub-section (8B), this sub-section shall have effect as if for the words "twenty five per cent", the words "twenty per cent" had been substituted :]

Provided [98][**further**] that no deduction shall be allowed under this section in respect of—

(*a*) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house ;

(*b*) any office appliances or road transport vehicles ;

(*c*) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33 ; and

(*d*) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

[99][*Explanation*.—For the purposes of this sub-section, "actual cost" means the actual cost of the ship, aircraft, machinery or plant to the assessee as reduced by that part of such cost which has been met out of the amount released to the assessee under sub-section (6) of section 32AB.]

(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely :—

(*a*) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft ;

(*b*) any new machinery or plant installed after the 31st day of March, 1976,—

(*i*) for the purposes of business of generation or distribution of electricity or any other form of power ; or

[1][(*ii*) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing ; or

(*iii*) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule :]

[2][**Provided** that nothing contained in clauses (*a*) and (*b*) shall apply in relation to,—

(*i*) a new ship or new aircraft acquired, or

(*ii*) any new machinery or plant installed,

after the 31st day of March, 1987 but before the 1st day of April, 1988, unless such ship or aircraft is acquired or such machinery or plant is installed in the circumstances specified in clause (*a*) of sub-section (8B) and the assessee furnishes evidence to the satisfaction of the Assessing Officer as specified in that clause ;]

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

99. Inserted, *ibid*.

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

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

[3][(*c*) any new machinery or plant installed after the 31st day of March, 1983, but before the [4][1st day of April, 1987], for the purposes of business of repairs to ocean-going vessels or other powered craft if the business is carried on by an Indian company and the business so carried on is for the time being approved[5] for the purposes of this clause by the Central Government.]

Explanation.—For the purposes of this sub-section and [6][sub-sections (2B) [7][, (2C)] and (4)],—

[8][(*1*)(*a*) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India ;

(*b*) "new machinery or plant" includes machinery or plant which before its installation by the assessee was used outside India by any other person, if the following conditions are fulfilled, namely :—

(*i*) such machinery or plant was not, at any time previous to the date of such installation by the assessee, used in India ;

(*ii*) such machinery or plant is imported into India from any country outside India ; and

(*iii*) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee,]

(*2*) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year, for the purposes of the business of the undertaking [9][does not exceed,—

[10][(*i*) in a case where the previous year ends before the 1st day of August, 1980, ten lakh rupees ;

(*ii*) in a case where the previous year ends after the 31st day of July,

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3. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

4. Substituted for "1st day of April, 1988" by the Finance Act, 1986, w.e.f. 1-4-1987.

5. For approved company, *see* Taxmann's Master Guide to Income-tax Act.

6. Substituted for "sub-section (4)" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

7. Inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

8. Substituted for the following clause (*1*) by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988 :

'(*1*) "new ship" or "new aircraft" or "new machinery or plant" shall have the same meanings as in the *Explanation* to clause (*vi*) of sub-section (1) of section 32 ;'

9. Substituted for "does not exceed ten lakh rupees" by the Finance Act, 1981, w.e.f. 1-4-1981.

10. Substituted for the following by the Finance Act, 1986, w.r.e.f. 1-4-1985 :

"(*i*) in a case where the previous year ends before the 1st day of August, 1980, ten lakh rupees ; and

(*ii*) in a case where the previous year ends after the 31st day of July, 1980, twenty lakh rupees ;"

1980, but before the 18th day of March, 1985, twenty lakh rupees; and

(*iii*) in a case where the previous year ends after the 17th day of March, 1985, thirty-five lakh rupees,]]

and for this purpose the value of any machinery or plant shall be,—

(*a*) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee ; and

(*b*) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.

[11][(2A) The deduction under sub-section (1) shall not be denied in respect of any machinery or plant installed and used mainly for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule, by reason only that such machinery or plant is also used for the purposes of business of construction, manufacture or production of any article or thing specified in the said list.]

[11][(2B) Where any new machinery or plant is installed after the 30th day of June, 1977, but before the 1st day of April, [12][1987], for the purposes of business of manufacture or production of any article or thing and such article or thing—

(*a*) is manufactured or produced by using any technology (including any process) or other know-how developed in, or

(*b*) is an article or thing invented in,

a laboratory owned or financed by the Government, or a laboratory owned by a public sector company or a University or by an institution recognised in this behalf by the prescribed authority,[13]

the provisions of sub-section (1) shall have effect in relation to such machinery or plant as if for the words "twenty-five per cent", the words "thirty-five per cent" had been substituted, if the following conditions are fulfilled, namely :—

(*i*) the right to use such technology (including any process) or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner ;

(*ii*) the assessee furnishes, along with his return of income for the assessment year for which the deduction is claimed, a certificate from the prescribed authority[13] to the effect that such article or thing is manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory ; and

(*iii*) the machinery or plant is not used for the purpose of business of manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

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

12. Substituted for "1982" by the Finance Act, 1982, w.e.f. 1-4-1982.

13. The prescribed authority under rule 5A is Secretary, Department of Scientific & Industrial Research, Government of India.

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

(*a*) "laboratory financed by the Government" means a laboratory owned by any body [including a society registered under the Societies Registration Act, 1860 (21 of 1860)] and financed wholly or mainly by the Government;

(*b*) [14][***]

(*c*) "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act.]

[15][(2C) Where any new machinery or plant, being machinery or plant which would assist in control of pollution or protection of environment and which has been notified[16] in this behalf by the Central Government in the Official Gazette, is installed after the 31st day of May, 1983 [17][but before the 1st day of April, 1987], in any industrial undertaking referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) of clause (*b*) of sub-section (2), the provisions of sub-section (1) shall have effect in relation to such machinery or plant as if for the words "twenty-five per cent", the words "thirty-five per cent" had been substituted.]

(3) Where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, or, as the case may be, the immediately succeeding previous year (the total income for this purpose being computed after deduction of the allowances under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A) is *nil* or is less than the full amount of the investment allowance,—

(*i*) the sum to be allowed by way of investment allowance for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to *nil* ; and

(*ii*) the amount of the investment allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the investment allowance to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the investment allowance, if any, still outstanding shall be carried forward to the following assessment year and so on, so,

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14. Omitted by the Finance Act, 1987, w.e.f. 1-4-1987. Prior to omission it read as under:

'(*b*) "public sector company" means any corporation established by or under any Central, State or Provincial Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);'

15. Inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

16. *See* Notification No. SO 555(E), dated 1-8-1984. For details, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, p. 1.502

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

however, that no portion of the investment allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, as the case may be, the immediately succeeding previous year.

Explanation.—Where for any assessment year, investment allowance is to be allowed in accordance with the provisions of this sub-section in respect of any ship or aircraft acquired or any machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year (the total income for this purpose being computed after deduction of the allowances under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A) is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :—

(*a*) the allowance under clause (*ii*) shall be made before any allowance under clause (*i*) is made; and

(*b*) where an allowance has to be made under clause (*ii*) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(4) The deduction under sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the particulars prescribed in this behalf have been furnished by the assessee in respect of the ship or aircraft or machinery or plant;

(*ii*) an amount equal to seventy-five per cent of the investment allowance to be actually allowed is debited to the profit and loss account of [18][any previous year in respect of which the deduction is to be allowed under sub-section (3) or any earlier previous year (being a previous year not earlier than the year in which the ship or aircraft was acquired or the machinery or plant was installed or the ship, aircraft, machinery or plant was first put to use)] and credited to a reserve account (to be called the "Investment Allowance Reserve Account") to be utilised—

(*a*) for the purposes of acquiring, before the expiry of a period of ten years next following the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in clauses (*a*), (*b*) and (*d*) of the [19][second] proviso to sub-section (1)] for the purposes of the business of the undertaking; and

(*b*) until the acquisition of a new ship or a new aircraft or new machinery or plant as aforesaid, for the purposes of the business

18. Substituted for "the previous year in respect of which the deduction is to be allowed" by the Finance Act, 1990, w.r.e.f. 1-4-1976.

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

of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India:

Provided that this clause shall have effect in respect of a ship as if for the word "seventy-five", the word "fifty" had been substituted.

Explanation.—Where the amount debited to the profit and loss account and credited to the Investment Allowance Reserve Account under this sub-section is not less than the amount required to be so credited on the basis of the amount of deduction in respect of investment allowance claimed in the return made by the assessee under section 139, but a higher deduction in respect of the investment allowance is admissible on the basis of the total income as proposed to be computed by the [20][Assessing] Officer under section 143, the [20][Assessing] Officer shall, by notice in writing in this behalf, allow the assessee an opportunity to credit within the time specified in the notice or within such further time as the [20][Assessing] Officer may allow, a further amount to the Investment Allowance Reserve Account out of the profits and gains of the previous year in which such notice is served on the assessee or of the immediately preceding previous year, if the accounts for that year have not been made up; and, if the assessee credits any further amount to such account within the time aforesaid, the amount so credited shall be deemed to have been credited to the Investment Allowance Reserve Account of the previous year in which the deduction is admissible and such amount shall not be taken into account in determining the adequacy of the reserve required to be created by the assessee in respect of the previous year in which such further credit is made:

Provided that such opportunity shall not be allowed by the [20][Assessing] Officer in a case where the difference in the total income as proposed to be computed by him and the total income as returned by the assessee arises out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of that section or the omission by the assessee to disclose his income fully and truly.

(5) Any allowance made under this section in respect of any ship, aircraft, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act—

(*a*) if the ship, aircraft, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed; or

(*b*) if at any time before the expiry of ten years from the end of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, the assessee does not utilise the amount credited to the reserve account under sub-section (4) for the purposes of acquiring a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in

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

clauses (*a*), (*b*) and (*d*) of the [21][second] proviso to sub-section (1)] for the purposes of the business of the undertaking; or

(*c*) if at any time before the expiry of the ten years aforesaid, the assessee utilises the amount credited to the reserve account under sub-section (4) for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any assets outside India or for any other purpose which is not a purpose of the business of the undertaking,

and the provisions of sub-section (4A) of section 155 shall apply accordingly:

Provided that nothing in clause (*a*) shall apply—

(*i*) where the ship, aircraft, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [22]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the ship, aircraft, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (6) or sub-section (7).

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, aircraft, machinery or plant, in respect of which investment allowance has been allowed to the amalgamating company under sub-section (1),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (4) in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, aircraft, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (4A) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(*b*) the balance of investment allowance, if any, still outstanding to the amalgamating company in respect of such ship, aircraft, machinery or plant, shall be allowed to the amalgamated company in accordance with the provisions of sub-section (3), so, however, that the total period for which the balance of investment allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (3) and the amalgamated company shall be treated as the assessee in respect of such ship, aircraft, machinery or plant for the purposes of this section.

(7) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship,

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

22. For definition of 'Government company', *see* footnote 18 on p. 1.19 *ante*.

aircraft, machinery or plant, the provisions of clauses (*a*) and (*b*) of sub-section (6) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this sub-section shall apply only where—

(*i*) all the property of the firm relating to the business immediately before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(8) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of any ship or aircraft acquired or any machinery or plant installed after such date [23][***] as may be specified therein.

[24][(8A) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, omit any article or thing from the list of articles or things specified in the Eleventh Schedule.]

[25][(8B) Notwithstanding anything contained in sub-section (8) or the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. GSR 870(E), dated the 12th June, 1986, issued thereunder, the provisions of this section shall apply in respect of,—

(*a*) (*i*) a new ship or new aircraft acquired after the 31st day of March, 1987 but before the 1st day of April, 1988, if the assessee furnishes evidence to the satisfaction of the Assessing Officer that he had, before the 12th day of June, 1986, entered into a contract for the purchase of such ship or aircraft with the builder or manufacturer or owner thereof, as the case may be;

(*ii*) any new machinery or plant installed after the 31st day of March, 1987 but before the 1st day of April, 1988, if the assessee furnishes evidence to the satisfaction of the Assessing Officer that before the 12th day of June, 1986, he had purchased such machinery or plant or had entered into a contract for the purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant, or had, where such machinery or plant has been manufactured in an undertaking owned by the assessee, taken steps for the manufacture of such machinery or plant:

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23. "not being earlier than three years from the date of such notification," omitted by the Finance Act, 1986, w.e.f. 1-4-1986.

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

25. Substituted for sub-section (8B) by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Sub-section (8B), as inserted by the Finance Act, 1986, w.e.f. 1-4-1987, stood as under:

"(8B) Subject to the provisions of clause (*ii*) of sub-section (3), no deduction shall be allowed under this section in the case of an assessee who has claimed the deduction allowable under section 32AB."

Provided that nothing contained in sub-section (1) shall entitle the assessee to claim deduction in respect of a ship or aircraft or machinery or plant referred to in this clause in any previous year except the previous year relevant to the assessment year commencing on the 1st day of April, 1989;

(*b*) a new ship or new aircraft acquired or any new machinery or plant installed after the 31st day of March, 1988, but before such date as the Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette[26], specify in this behalf.

(8C) Subject to the provisions of clause (*ii*) of sub-section (3), where a deduction has been allowed to an assessee under sub-section (1) in any assessment year, no deduction shall be allowed to the assessee under section 32AB in the said assessment year (hereinafter referred to as the initial assessment year) and a block of further period of four years beginning with the assessment year immediately succeeding the initial assessment year.]

[27](9) [*Omitted by the Finance Act, 1990, w.r.e.f. 1-4-1976.*]

[28][**Investment deposit account.**

32AB. (1) Subject to the other provisions of this section, where an assessee, whose total income includes income chargeable to tax under the head "Profits and gains of business or profession", has, out of such income,—

(*a*) deposited any amount in an account (hereafter in this section referred to as deposit account) maintained by him with the Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier; or

(*b*) utilised any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account under clause (*a*),

in accordance with, and for the purposes specified in, a scheme[29] (hereafter in this section referred to as the scheme) to be framed by the Central Government, or if the assessee is carrying on the business of growing and manufacturing tea in India, to be approved in this behalf by the Tea Board, the assessee shall be allowed a deduction [30][(such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72)] of—

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26. *See* footnote 96 on page 1.142 *ante*.

27. Prior to omission, sub-section (9) read as under:
"(9) For the removal of doubts, it is hereby declared that the deduction under sub-section (1) shall not be denied by reason only that the amount debited to the profit and loss account of the relevant previous year and credited to the Investment Allowance Reserve Account exceeds the amount of the profit of such previous year (as arrived at without making the debit aforesaid), in accordance with the profit and loss account."

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

29. Investment Deposit Account Scheme, 1986 is the scheme framed by the Government under sub-section (1). For details of the Scheme, *see* Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.503-1.510.

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

(*i*) a sum equal to the amount, or the aggregate of the amounts, so deposited and any amount so utilised; or

(*ii*) a sum equal to twenty per cent of the profits of [31][***] business or profession as computed in the accounts of the assessee audited in accordance with sub-section (5),

whichever is less :

[32][**Provided** that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner, or as the case may be, any member of such firm, association of persons or body of individuals:]

[33][**Provided further** that no such deduction shall be allowed in relation to the assessment year commencing on the 1st day of April, 1991, or any subsequent assessment year.]

(2) For the purposes of this section,—

[34][***]

[35][(*ii*) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India;

(*iii*) "new machinery or plant" includes machinery or plant which before its installation by the assessee was used outside India by any other person, if the following conditions are fulfilled, namely :—

(*a*) such machinery or plant was not, at any time previous to the date of such installation by the assessee, used in India;

(*b*) such machinery or plant is imported into India from any country outside India; and

(*c*) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under this

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31. Word "eligible" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

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

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

34. Omitted by the Finance Act, 1989, w.e.f. 1-4-1991. Prior to omission, clause (*i*) read as under :

'(*i*) "eligible business or profession" shall mean business or profession, other than—

(*a*) the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule carried on by an industrial undertaking, which is not a small-scale industrial undertaking as defined in section 80HHA;

(*b*) the business of leasing or hiring of machinery or plant to an industrial undertaking, other than a small-scale industrial undertaking as defined in section 80HHA, engaged in the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule;'

35. Substituted for the following clause (*ii*) by the Finance Act, 1987, w.e.f. 1-4-1987 :

'(*ii*) "new ship" or "new aircraft" or "new machinery" shall have the same meanings as in the *Explanation* to clause (*vi*) of sub-section (1) of section 32.'

Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;

(*iv*) "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).]

(3) [36][The profits of business or profession of an assessee for the purposes of sub-section (1) shall] be an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of sub-section (1) of section 32 from the amounts of profits computed in accordance with the requirements of [37]Parts II and III of the [38][Schedule VI] to the Companies Act, 1956 (1 of 1956), [39][as increased by the aggregate of—

(*i*) the amount of depreciation;

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

(*iii*) the amount of surtax paid or payable under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(*iv*) the amounts carried to any reserves, by whatever name called;

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

(*vi*) the amount by way of provision for losses of subsidiary companies; and

(*vii*) the amount or amounts of dividends paid or proposed,

if any debited to the profit and loss account; and as reduced by any amount or amounts withdrawn from reserves or provisions, if such amounts are credited to the profit and loss account. [40][***]]

[41][***]

(4) No deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;

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36. Substituted for the portion beginning with the words "The profits of eligible business or profession" and ending with the words "eligible business or profession are maintained," by the Finance Act, 1989, w.e.f. 1-4-1991.

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

38. Substituted for "Sixth Schedule" by the Finance Act, 1989, w.e.f. 1-4-1991.

39. Substituted for "as increased by an amount equal to the depreciation, if any, debited in the audited profit and loss account; and" by the Finance Act, 1987, w.e.f. 1-4-1987.

40. "and" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

41. Omitted, *ibid.* Prior to omission, clause (*b*) read as under:

"(*b*) in a case where such separate accounts are not maintained or are not available, be such amount which bears to the total profits of the business or profession of the assessee after allowing depreciation in accordance with the provisions of sub-section (1) of section 32, the same proportion as the total sales, turnover or gross receipts of the eligible business or profession bear to the total sales, turnover or gross receipt of the business or profession carried on by the assessee."

(*b*) any office appliances (not being computers);

(*c*) any road transport vehicles;

(*d*) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;

[42][(*e*) any new machinery or plant to be installed in an industrial undertaking, other than a small-scale industrial undertaking, as defined in section 80HHA, for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.]

(5) The deduction under sub-section (1) shall not be admissible unless the accounts of the business or profession of the assessee for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form[43] duly signed and verified by such accountant :

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business or profession audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

[44][(5A) Any amount standing to the credit of the assessee in the deposit account shall not be allowed to be withdrawn before the expiry of a period of five years from the date of deposit except for the purposes specified in the scheme [45][or] in the circumstances specified below :—

(*a*) closure of business;

(*b*) death of an assessee;

(*c*) partition of a Hindu undivided family;

(*d*) dissolution of a firm;

(*e*) liquidation of a company.]

[46][*Explanation*.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall affect the operation of the provisions of sub-section (5AA) or sub-section (6) in relation to any withdrawals made from the deposit account either before or after the expiry of a period of five years from the date of deposit.]

[46][(5AA) Where any amount, standing to the credit of the assessee in the deposit account, is withdrawn during any previous year by the assessee in the

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42. Inserted by the Finance Act, 1989, w.e.f. 1-4-1991.

43. *See* rule 5AB and Form No. 3AA for audit report required under section 32AB(5).

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

45. Substituted for "and" by the Finance Act, 1989, w.r.e.f. 1-4-1987.

46. Inserted, *ibid*.

circumstance specified in clause (*a*) or clause (*d*) of sub-section (5A), the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.]

[47][(5B) Where any amount standing to the credit of the assessee in the deposit account is utilised by the assessee for the purposes of any expenditure in connection with the [48][***] business or profession in accordance with the scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".]

(6) Where any amount, standing to the credit of the assessee in the deposit account, released during any previous year by the Development Bank for being utilised by the assessee for the purposes specified in the scheme or at the closure of the account [49][[in circumstances other than the circumstances specified in clauses (*b*), (*c*) and (*e*) of sub-section (5A)]], is not utilised in accordance with [50][, and within the time specified in,] the scheme, either wholly or in part, [51][***] the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

(7) Where any asset acquired in accordance with the scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deductions allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year:

Provided that nothing in this sub-section shall apply—

(*i*) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a [52]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme continues to apply to the company in the manner applicable to the firm.

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

48. "eligible" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

49. Inserted by the Finance Act, 1989, with retrospective effect from 1-4-1987.

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

51. "within that previous year" omitted, *ibid*.

52. For definition of "Government company", *see* footnote 18, on p. 1.19 *ante*.

Explanation.—The provisions of clause (*ii*) of the proviso shall apply only where—

(*i*) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company;

(*ii*) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(8) The Central Government may, if it considers it necessary or expedient so to do, by notification in the Official Gazette, omit any article or thing from the list of articles or things specified in the Eleventh Schedule.

(9) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the provisions of this section shall not apply to any class of assessees, with effect from such date as it may specify in the notification.

[53][(10) Where a deduction has been allowed to an assessee under this section in any assessment year, no deduction shall be allowed to the assessee under sub-section (1) of section 32A in the said assessment year (hereinafter referred to as the initial assessment year) and a block of further period of four years beginning with the assessment year immediately succeeding the initial assessment year].]

Explanation.—In this section,—

(*a*) "computers" does not include calculating machines and calculating devices;

(*b*) "Development Bank" means—

(*i*) in the case of an assessee carrying on business of growing and manufacturing tea in India, the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);

(*ii*) in the case of other assessees, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964) and includes such bank or institution as may be specified in the scheme in this behalf.]

Development rebate.

33. [54][(1)(*a*) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee

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53. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its substitution, sub-section (10) stood as under:

"(10) No deduction shall be allowed under this section in the case of an assessee who has claimed the deduction allowable under section 33AB."

54. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Sub-section (1) was first amended by the Income-tax (Amendment) Act, 1963, w.e.f. 1-4-1963, and then by the Finance Act, 1965, and then by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section and of section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate as specified in clause (*b*).

(*b*) The sum referred to in clause (*a*) shall be—

(*A*) in the case of a ship, forty per cent of the actual cost thereof to the assessee;

(*B*) in the case of machinery or plant,—

(*i*) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule,—

(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*ii*) where the machinery or plant is installed after the 31st day of March, 1967, by an assessee being an Indian company in premises used by it as a hotel and such hotel is for the time being approved in this behalf by the Central Government,—

(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*iii*) where the machinery or plant is installed after the 31st day of March, 1967, being an asset representing expenditure of a capital nature on scientific research related to the business carried on by the assessee,—

(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*iv*) in any other case,—

(*a*) twenty per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) fifteen per cent of such cost, where it is installed after the 31st day of March, 1970.]

[55][[56](1A)(*a*) An assessee who, after the 31st day of March, 1964, acquires any ship which before the date of acquisition by him was used by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely :—

(*i*) such ship was not previous to the date of such acquisition owned at any time by any person resident in India;

(*ii*) such ship is wholly used for the purposes of the business carried on by the assessee; and

(*iii*) such other conditions as may be prescribed.

(*b*) An assessee who installs any machinery or plant (other than office appliances or road transport vehicles) which before such installation by the assessee was used outside India by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely :—

(*i*) such machinery or plant was not used in India at any time previous to the date of such installation by the assessee;

(*ii*) it is imported in India by the assessee from any country outside India;

(*iii*) no deduction on account of depreciation or development rebate in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;

(*iv*) such machinery or plant is wholly used for the purposes of the business carried on by the assessee; and

(*v*) such other conditions as may be prescribed.

(*c*) The development rebate under this sub-section shall be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year.]

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be (the total income for this purpose being computed without making any allowance under sub-section (1) [57][or sub-section (1A)] [58][of this section or sub-section (1) of section 33A] [59][or any deduction under Chapter VI-A

55. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

56. *See* rule 5B.

57. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

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

59. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

[60][***]]) is *nil* or is less than the full amount of the development rebate calculated at the rate applicable thereto under [61][sub-section (1) or sub-section (1A), as the case may be],—

(*i*) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) [62][or sub-section (1A)] shall be only such amount as is sufficient to reduce the said total income to *nil* ; and

(*ii*) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however, that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

Explanation.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of sub-section (2) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year (the total income for this purpose being computed without making any allowance under sub-section (1) [63][or sub-section (1A)] [64][of this section or sub-section (1) of section 33A] [65][or any deduction under Chapter VI-A [66][***]]) is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :—

(*i*) the allowance under clause (*ii*) of sub-section (2) shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (2) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

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60. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

61. Substituted for "that sub-section" by the Finance Act, 1964, w.e.f. 1-4-1964.

62. Inserted, *ibid*.

63. Inserted, *ibid*.

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

65. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

66. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

[67][(3) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, machinery or plant in respect of which development rebate has been allowed to the amalgamating company under sub-section (1) or sub-section (1A),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) of section 34 in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(*b*) the balance of development rebate, if any, still outstanding to the amalgamating company in respect of such ship, machinery or plant shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so, however, that the total period for which the balance of development rebate shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such ship, machinery or plant for the purposes of this section and section 34.]

(4) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship, machinery or plant, the provisions of clauses (*a*) and (*b*) of sub-section (3) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this clause shall apply only where—

(*i*) all the property of the firm relating to the business immediately before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

[68][(5) The Central Government, if it considers it necessary or expedient so to do, may, by notification[69] in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of a ship acquired or machinery

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67. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967. Sub-section (3) was first amended by the Finance Act, 1964, w.e.f. 1-4-1964 and then by the Finance Act, 1966, w.e.f. 1-4-1966.

68. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

69. In terms of Notification No. SO 2167, dated 28-5-1971 issued under sub-section (5) of section 33, the grant of development rebate has been discontinued in respect of ships acquired or machinery or plant installed after 31-5-1974. However, section 16 of the Finance Act, 1974, as amended by section 30 of the Finance Act, 1975, has made an independent provision for the continuance of development rebate for a limited period in

(Contd. on p. 1.161)

or plant installed after such date, not being earlier than three years from the date of such notification, as may be specified therein.]

[70][(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any office premises or any residential accommodation, including any accommodation in the nature of a guest-house:]

[71][**Provided** that the provisions of this sub-section shall not apply in the case of an assessee being an Indian company, in respect of any machinery or plant installed by it in premises used by it as a hotel, where the hotel is for the time being approved in this behalf by the Central Government.]

[72][**Development allowance.**

[73]**33A.** (1) In respect of planting of tea bushes on any land in India owned by an assessee who carries on business of growing and manufacturing tea in India, a sum by way of development allowance equivalent to—

(*i*) where tea bushes have been planted on any land not planted at any time with tea bushes or on any land which had been previously abandoned, [74][fifty] per cent of the actual cost of planting; and

(*ii*) where tea bushes are planted in replacement of tea bushes that have died or have become permanently useless on any land already planted, [75][thirty] per cent of the actual cost of planting,

shall, subject to the provisions of this section, be allowed as a deduction [76][in the manner specified hereunder, namely :—

(*a*) the amount of the development allowance shall, in the first instance, be computed with reference to that portion of the actual cost of planting which is incurred during the previous year in which the land is prepared for planting or replanting, as the case may be, and in the

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(Contd. from p. 1.160)

certain cases. As a result grant of the rebate was continued, subject to certain conditions, for limited period, *i.e.*, from 1-6-1974 to 31-5-1977 in respect of—

(*a*) ship which was acquired after 31-5-1974 but before 1-1-1977;

(*b*) any machinery or plant [other than mentioned in (*c*) below] which was installed after 31-5-1974 but before 1-6-1975; and

(*c*) coal-fired equipment or any machinery or plant for converting oil-fired equipment into coal-fired equipment which was installed after 31-5-1974 but before 1-6-1977.

See Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, p. 1.520

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

71. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

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

73. *See* also Circular No. 325, dated 3-2-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

74. Substituted for "forty" by the Finance Act, 1966, w.e.f. 1-4-1966.

75. Substituted for "twenty", *ibid*.

76. Substituted for "in respect of the third succeeding previous year next following the previous year in which the land is prepared for planting or replanting, as the case may be", *ibid*.

previous year next following, and the amount so computed shall be allowed as a deduction in respect of such previous year next following; and

(*b*) thereafter, the development allowance shall again be computed with reference to the actual cost of planting, and if the sum so computed exceeds the amount allowed as a deduction under clause (*a*), the amount of the excess shall be allowed as a deduction in respect of the third succeeding previous year next following the previous year in which the land has been prepared for planting or replanting, as the case may be :]

[77][**Provided** that no deduction under clause (*i*) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1990 :

Provided further that no deduction shall be allowed under clause (*ii*) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970.]

(2) Where the total income of the assessee assessable for the assessment year relevant to [78][the previous year in respect of which the deduction is required to be allowed under sub-section (1)] [79][(the total income for this purpose being computed after deduction of the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A [80][***])] is *nil* or is less than the full amount of the development allowance calculated at the rates [81][and in the manner] specified in sub-section (1)—

(*i*) the sum to be allowed by way of development allowance for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to *nil* ; and

(*ii*) the amount of the development allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development allowance to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development allowance, if any, still outstanding

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77. Substituted for the following by the Finance Act, 1990, w.e.f. 1-4-1990:
"**Provided** that no deduction under clause (*i*) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and no deduction shall be allowed under clause (*ii*) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970."

78. Substituted for "the third succeeding previous year next following the previous year in which the land has been prepared" by the Finance Act, 1966, w.e.f. 1-4-1966.

79. Substituted for "(the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33 but without making any allowance under sub-section (1) of this section)" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

80. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

81. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

shall be carried forward to the following assessment year and so on, so, however, that no portion of the development allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year in which the deduction was first allowable.

Explanation.—Where for any assessment year development allowance is to be allowed in accordance with the provisions of sub-section (2) in respect of more than one previous year, and the total income of the assessee assessable for that assessment year [82][(the total income for this purpose being computed after deduction of the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A [83][***])] is less than the amount of the development allowance due to be made in respect of that assessment year, the following procedure shall be followed, namely :—

(*i*) the allowance under clause (*ii*) of sub-section (2) of this section shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (2) of this section in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(3) The deduction under sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the particulars prescribed[84] in this behalf have been furnished by the assessee;

(*ii*) an amount equal to seventy-five per cent of the development allowance to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than—

(*a*) for distribution by way of dividends or profits; or

(*b*) for remittance outside India as profits or for the creation of any asset outside India; and

(*iii*) such other conditions as may be prescribed.

(4) If any such land is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which the deduction under sub-section (1) was allowed, any allowance

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82. Substituted for "(the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33 but without making any allowance under sub-section (1) of this section)" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

83. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

84. *See* rule 8A and Form Nos. 4, 5 and 5A.

under this section shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5A) of section 155 shall apply accordingly :

Provided that this sub-section shall not apply—

(*i*) where the land is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)[85]; or

(*ii*) where the sale or transfer of the land is made in connection with the amalgamation or succession referred to in sub-section (5) or sub-section (6).

[86][(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any land in respect of which development allowance has been allowed to the amalgamating company under sub-section (1),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) in respect of the reserve created by the amalgamating company and in respect of the period within which such land shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5A) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(*b*) the balance of development allowance, if any, still outstanding to the amalgamating company in respect of such land shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so, however, that the total period for which the balance of development allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such land for the purposes of this section.]

(6) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any land on which development allowance has been allowed, the provisions of clauses (*a*) and (*b*) of sub-section (5) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this sub-section shall apply if the conditions laid down in the *Explanation* to sub-section (4) of section 33 are fulfilled.

(7) For the purposes of this section, "actual cost of planting" means the aggregate of—

(*i*) the cost of preparing the land;

(*ii*) the cost of seeds, cutting and nurseries;

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85. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.

86. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

(*iii*) the cost of planting and replanting; and

(*iv*) the cost of upkeep thereof for the previous year in which the land has been prepared and the three successive previous years next following such previous year,

reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority:

[87][**Provided** that where such cost exceeds—

(*i*) forty thousand rupees per hectare in respect of land situate in a hilly area comprised in the district of Darjeeling; or

(*ii*) thirty-five thousand rupees per hectare in respect of land situate in a hilly area comprised in an area other than the district of Darjeeling; or

(*iii*) thirty thousand rupees per hectare in any other area,

then, the excess shall be ignored.

Explanation.—For the purposes of this proviso, "district of Darjeeling" means the district of Darjeeling as on the 28th day of February, 1981, being the date of introduction of the Finance Bill, 1981, in the House of the People.]

(8) The Board may, having regard to the elevation and topography, by general or special order, declare any areas to be [88]hilly areas for the purposes of this section and such order shall not be questioned before any court of law or any other authority.

[89][*Explanation*.—For the purposes of this section, an assessee having a leasehold or other right of occupancy in any land shall be deemed to own such land and where the assessee transfers such right, he shall be deemed to have sold or otherwise transferred such land.]

[90][**Tea development account.**

33AB. (1) Where an assessee carrying on business of growing and manufacturing tea in India has, before the expiry of six months from the end of

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87. Substituted by the Finance Act, 1981, w.e.f. 1-4-1982.

88. For notified hilly areas, *see* Taxmann's Master Guide to Income-tax Act.

89. Inserted by the Finance Act, 1975, w.r.e.f. 1-4-1965.

90. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991. Prior to substitution, section 33AB, as inserted by the Finance Act, 1985, w.e.f. 1-4-1986 and later amended by the Finance Act, 1987, w.e.f. 1-4-1988, read as under:

'33AB. *Tea development account.*—(1) Where an assessee carrying on business of growing and manufacturing tea in India has, during the previous year, deposited with the National Bank any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Tea Board, the assessee shall, subject to the provisions of this section, be allowed a deduction of—

(*a*) a sum equal to the amount or the aggregate of the amounts so deposited during the previous year, or

(*b*) a sum equal to twenty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),

whichever is less.

(Contd. on p. 1.166)

the previous year or before furnishing the return of his income, [91][whichever is earlier,—

(*a*) deposited with the National Bank any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Tea Board ; or

(*b*) deposited any amount in an account (hereafter in this section referred to as the Tea Deposit Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board (hereafter in this section referred to as the deposit scheme) with the previous approval of the Central Government,

the assessee shall, subject to the provisions of this section,] be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of—

(*a*) a sum equal to the amount or the aggregate of the amounts so deposited ; or

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(*Contd. from p. 1.165*)

Explanation.—In this section,—

(*a*) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981) ;

(*b*) "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).

(2) Where the amount or the aggregate of the amounts deposited by the assessee in the special account during the previous year exceeds the sum allowable as deduction under sub-section (1), the excess shall be treated, for the purposes of that sub-section, as a deposit made by the assessee in the next following previous year.

(3) Where any amount standing to the credit of the assessee in the special account is utilised by the assessee for the purposes of the business referred to in sub-section (1) in accordance with the scheme,—

(*a*) for acquiring any asset being building, machinery, plant or furniture, the actual cost of such asset as determined under clause (*1*) of section 43, shall, for the purposes of this Act, be reduced by the amount so utilised ;

(*b*) for incurring any expenditure for the purposes of such business, such expenditure shall be reduced by the amount so utilised and the resultant sum, if any, shall be taken into account for the purposes of this Act.

(4) Where any amount, standing to the credit of the assessee in the special account, which is released during any previous year by the National Bank for being utilised by the assessee for the purposes of the business referred to in sub-section (1) in accordance with the scheme is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year.

(5) The provisions of this section shall apply in relation to the assessment years commencing on the 1st day of April, 1986, and the 1st day of April, 1987.'

91. Substituted for words beginning with "whichever is earlier, deposited with the National Bank" and ending with "the assessee shall, subject to the provisions of this section," by the Finance Act, 1994, w.e.f. 1-4-1995.

(*b*) a sum equal to twenty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),

whichever is less :

Provided that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner, or as the case may be, any member of such firm, association of persons or body of individuals :

Provided further that where any deduction, in respect of any amount deposited in the special account [92][, or in the Tea Deposit Account], has been allowed under this sub-section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(2) The deduction under sub-section (1) shall not be admissible unless the accounts of such business of the assessee for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form[93] duly signed and verified by such accountant :

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

(3) Any amount standing to the credit of the assessee in [94][the special account or the Tea Deposit Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme] or in the circumstances specified below :—

(*a*) closure of business ;

(*b*) death of an assessee ;

(*c*) partition of a Hindu undivided family ;

(*d*) dissolution of a firm ;

(*e*) liquidation of a company.

(4) Notwithstanding anything contained in sub-section (3), no deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house ;

(*b*) any office appliances (not being computers) ;

(*c*) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise)

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

93. *See* rule 5AC and Form No. 3AC for audit report required under section 33AB(2).

94. Substituted for "the special account shall not be allowed to be withdrawn except for the purposes specified in the scheme" by the Finance Act, 1994, w.e.f. 1-4-1995.

in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year ;

(*d*) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

(5) Where any amount, standing to the credit of the assessee in the special account [95][or in the Tea Deposit Account], is withdrawn during any previous year by the assessee in the circumstance specified in clause (*a*) or clause (*d*) of sub-section (3), the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.

(6) Where any amount standing to the credit of the assessee in the special account [95][or in the Tea Deposit Account] is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme [96][or the deposit scheme], such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(7) Where any amount, standing to the credit of the assessee in the special account [95][or in the Tea Deposit Account], which is released during any previous year by the National Bank [96][or which is withdrawn by the assessee from the Tea Deposit Account] for being utilised by the assessee for the purposes of such business in accordance with the scheme [96][or the deposit scheme] is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year :

Provided that this sub-section shall not apply in a case where such amount is released during any previous year at the closure of the account in circumstances specified in clauses (*b*), (*c*) and (*e*) of sub-section (3).

(8) Where any asset acquired in accordance with the scheme [96][or the deposit scheme] is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year :

Provided that nothing in this sub-section shall apply—

(*i*) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a Government company[97] as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; or

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

96. Inserted, *ibid*.

97. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.

(*ii*) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme [98][or the deposit scheme] continues to apply to the company in the manner applicable to the firm.

Explanation.—The provisions of clause (*ii*) of the proviso shall apply only where—

(*i*) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company ;

(*ii*) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company ; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(9) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed after such date as may be specified therein.

Explanation.—In this section,—

(*a*) "National Bank" means the National Bank for Agricultural and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981).

(*b*) "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).]

[99][**Site Restoration Fund.**

33ABA. *(1) Where an assessee is carrying on business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business, has before the end of the previous year—*

(a) *deposited with the State Bank of India any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas; or*

(b) *deposited any amount in an account (hereafter in this section referred to as the Site Restoration Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Ministry referred to in clause (*a*) (hereafter in this section referred to as the deposit scheme),*

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

99. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

the assessee shall, subject to the provisions of this section, be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of—

(i) *a sum equal to the amount or the aggregate of the amounts so deposited; or*

(ii) *a sum equal to twenty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),*

whichever is less :

Provided *that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner or, as the case may be, any member of such firm, association of persons or body of individuals :*

Provided further *that where any deduction, in respect of any amount deposited in the special account, or in the Site Restoration Account, has been allowed under this sub-section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year :*

Provided also *that any amount credited in the special account or Site Restoration Account by way of interest shall be deemed to be a deposit.*

(2) The deduction under sub-section (1) shall not be admissible unless the accounts of such business of the assessee for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation *below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant :*

Provided *that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.*

(3) Any amount standing to the credit of the assessee in the special account or the Site Restoration Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme.

(4) Notwithstanding anything contained in sub-section (3), no deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(a) *any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;*

(b) *any office appliances (not being computers);*

(c) *any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;*

(d) *any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.*

(5) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any previous year by the assessee, the amount so withdrawn from the account, as reduced by the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

Explanation.—*Where any amount is withdrawn on closure of the account in a previous year in which the business carried on by the assessee is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.*

(6) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme or the deposit scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(7) Where any amount, standing to the credit of the assessee in the special account or in the Site Restoration Account, which is released during any previous year by the State Bank of India or which is withdrawn by the assessee from the Site Restoration Account for being utilised by the assessee for the purposes of such business in accordance with the scheme or the deposit scheme is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year.

[99a]**[***]**

(8) Where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year :

99a. Proviso omitted by the Finance Act, 1999, w.e.f. **1-4-1999**. Prior to its omission, proviso, as inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999**, read as under :

"**Provided** that this sub-section shall not apply in a case where such amount is released during any previous year at the closure of the account in circumstances specified in clauses (*b*), (*c*) and (*e*) of sub-section (3)."

Provided *that nothing in this sub-section shall apply—*

(i) *where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a Government company*[1] *as defined in section 617 of the Companies Act, 1956 (1 of 1956); or*

(ii) *where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme or the deposit scheme continues to apply to the company in the manner applicable to the firm.*

Explanation.—*The provisions of clause (*ii*) of the proviso shall apply only where—*

(i) *all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company;*

(ii) *all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and*

(iii) *all the shareholders of the company were partners of the firm immediately before the succession.*

(9) The Central Government may, if it considers necessary or expedient so to do, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed after such date as may be specified therein.

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

(a) *"State Bank of India" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);*

(b) *the expression "amount standing to the credit of the assessee in the special account or the Site Restoration Account" includes interest accrued to such accounts.*]

[2][**Reserves for shipping business.**

33AC. (1) [3][In the case of an assessee, being a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships, there shall, in accordance with and subject

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1. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.
2. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.
3. Substituted for the portion beginning with the words "In the case of an assessee" and ending with the words "manner laid down in sub-section (2) :" by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to substitution the quoted portion, as amended by the Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"In the case of an assessee, being a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount, not exceeding the total income (computed before making any deduction under this section and Chapter VI-A), as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised in the manner laid down in sub-section (2) :"

to the provisions of this section, be allowed a deduction of an amount not exceeding fifty per cent of profits derived from the business of operation of ships (computed under the head "Profits and gains of business or profession" and before making any deduction under this section), as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account, to be utilised in the manner laid down in sub-section (2) :]

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid-up share capital (excluding the amounts capitalised from reserves) of the assessee, no allowance under this sub-section shall be made in respect of such excess.

(2) The amount credited to the reserve account under sub-section (1) shall be utilised by the assessee before the expiry of a period of eight years next following the previous year in which the amount was credited—

(*a*) for acquiring a new ship for the purposes of the business of the assessee ; and

(*b*) until the acquisition of a new ship, for the purposes of the business of the assessee other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(3) Where any amount credited to the reserve account under sub-section (1),—

(*a*) has been utilised for any purpose other than that referred to in clause (*a*) or clause (*b*) of sub-section (2), the amount so utilised ; or

(*b*) has not been utilised for the purpose specified in clause (*a*) of sub-section (2), the amount not so utilised ; or

(*c*) has been utilised for the purpose of acquiring a new ship as specified in clause (*a*) of sub-section (2), but such ship is sold or otherwise transferred [3a]**[***, other than in any scheme of demerger***]** by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, the amount so utilised in acquiring the ship,

shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised ; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of eight years specified in sub-section (2) ; or

(*iii*) in a case referred to in clause (*c*), in the year in which the sale or transfer took place,

and shall be charged to tax accordingly.

3a. The italicised words shall be inserted by the Finance Act, 1999, w.e.f. **1-4-2000**.

Explanation.—For the purposes of this section,—

(*a*) [4]"public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956) ;

[5][(*aa*) [6]"Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956) ;]

(*b*) "new ship" shall have the same meaning as in clause (*ii*) of sub-section (2) of section 32AB.]

[7][**Rehabilitation allowance.**

33B. Where the business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

(*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature ; or

(*ii*) riot or civil disturbance ; or

(*iii*) accidental fire or explosion ; or

(*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee, he shall, in respect of the previous year in which the business is so re-established, reconstructed or revived, be allowed a deduction of a sum by way of rehabilitation allowance equivalent to sixty per cent of the amount of the deduction allowable to him under clause (*iii*) of sub-section (1) of section 32 in respect of the building, machinery, plant or furniture so damaged or destroyed :

[8][**Provided** that no deduction under this section shall be allowed in relation to the assessment year commencing on the 1st day of April, 1985, or any subsequent assessment year.]

Explanation.—In this section, "industrial undertaking" means any undertaking which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.]

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4. For definition of "public company" under clause (*iv*) of section 3(1) of the Companies Act, 1956, *see* **Appendix One.**

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

6. For definition of "Government company", *see* footnote 18 on page 1.19 *ante*.

7. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

8. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

Conditions for depreciation allowance and development rebate.

34. (1) [9][***]

(2) [10][***]

(3)(*a*) The deduction referred to in section 33 shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the profit and loss account of [11][any previous year in respect of which the deduction is to be allowed under sub-section (2) of that section or any earlier previous year (being a previous year not earlier than the year in which the ship was acquired or the machinery or plant was installed or the ship, machinery or plant was first put to use)] and credited

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9. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (1), as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, stood as under :

"(1) The deductions referred to in sub-section (1) or sub-section (1A) of section 32 shall be allowed only if the prescribed particulars have been furnished ; and the deduction referred to in section 33 shall be allowed only if the particulars prescribed for the purpose of clause (*i*) and clause (*ii*) of sub-section (1) of section 32 have been furnished by the assessee in respect of the ship or machinery or plant."

10. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (2), as amended by the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975 and the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, stood as under :

"(2) For the purposes of section 32—

(*i*) the aggregate of all deductions in respect of depreciation made under sub-section (1) or sub-section (1A) of section 32 or under the Indian Income-tax Act, 1922 (11 of 1922), or under any Act repealed by that Act or under the Indian Income-tax Act, 1886 (2 of 1886), shall, in no case, exceed the actual cost to the assessee of the building, machinery, plant, furniture, structure or work, as the case may be.

Explanation.—Where a capital asset is transferred—

(*i*) by a holding company to its subsidiary company or by a subsidiary company to its holding company, or

(*ii*) by a company to another company in a scheme of amalgamation,

and the conditions specified in clause (*iv*) or clause (*v*) or, as the case may be, clause (*vi*) of section 47 are satisfied, then, in determining the aggregate of all deductions in respect of depreciation under this clause, account shall also be taken of the deductions in respect of depreciation allowed in the case of the company from which the asset has been transferred ;

(*ii*) nothing in clause (*i*) or clause (*ii*) or clause (*iia*) or clause (*iv*) or clause (*v*) or clause (*vi*) of sub-section (1) of section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any building, machinery, plant or furniture sold, discarded, demolished or destroyed in that year ;

(*iii*) nothing in clause (*i*) of sub-section (1A) of section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any structure or work in or in relation to a building referred to in that sub-section which is sold, discarded, demolished or destroyed or is surrendered as a result of the determination of the lease or other right of occupancy in respect of the building in that year."

11. Substituted for "the relevant previous year" by the Finance Act, 1990, w.r.e.f. 1-4-1962.

to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than—

(*i*) for distribution by way of dividends or profits ; or

(*ii*) for remittance outside India as profits or for the creation of any asset outside India :

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948), or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 :

[12][**Provided further** that where a ship has been acquired after the 28th day of February, 1966, this clause shall have effect in respect of such ship as if for the words "seventy-five", the word "fifty" had been substituted.]

Explanation.—[13][*Omitted by the Finance Act, 1990, w.r.e.f. 1-4-1962. Earlier, it was inserted by the Finance Act, 1966, w.r.e.f. 1-4-1962.*]

(*b*) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of section 155 shall apply accordingly :

Provided that this clause shall not apply—

(*i*) where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 ; or

(*ii*) where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [14]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; or

(*iii*) where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (3) or sub-section (4) of section 33.

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12. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

13. Prior to omission, *Explanation* read as under :

"*Explanation.*—For the removal of doubts, it is hereby declared that the deduction referred to in section 33 shall not be denied by reason only that the amount debited to the profit and loss account of the relevant previous year and credited to the reserve account aforesaid exceeds the amount of the profit of such previous year (as arrived at without making the debit aforesaid) in accordance with the profit and loss account."

14. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.

[15][**Restriction on unabsorbed depreciation and unabsorbed investment allowance for limited period in case of certain domestic companies.**

34A. (1) In computing the profits and gains of the business of a domestic company in relation to the previous year relevant to the assessment year commencing on the 1st day of April, 1992, where effect is to be given to the unabsorbed depreciation allowance or unabsorbed investment allowance or both in relation to any previous year relevant to the assessment year commencing on or before the 1st day of April, 1991, the deduction shall be restricted to two-third of such allowance or allowances and the balance,—

(*a*) where it relates to depreciation allowance, be added to the depreciation allowance for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 and be deemed to be part of that allowance or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year and so on for the succeeding previous years ;

(*b*) where it relates to investment allowance, be carried forward to the assessment year commencing on the 1st day of April, 1993 and the balance of the investment allowance, if any, still outstanding shall be carried forward to the following assessment year and where the period of eight years has expired before the portion of such balance is adjusted, the said period shall be extended beyond eight years till such time the portion of the said balance is absorbed in the profits and gains of the business of the domestic company.

(2) For the assessment year commencing on the 1st day of April, 1992, the provisions of sub-section (2) of section 32 and sub-section (3) of section 32A shall apply to the extent such provisions are not inconsistent with the provisions of sub-section (1) of this section.

(3) Nothing contained in sub-section (1) shall apply where the amount of unabsorbed depreciation allowance or of the unabsorbed investment allowance, as the case may be, or the aggregate amount of such allowances in the case of a domestic company is less than one lakh rupees.

(4) Nothing contained in sections 234B and 234C shall apply to any shortfall in the payment of any tax due on the assessed tax or, as the case may be, returned income where such shortfall is on account of restricting the amount of depreciation allowance or investment allowance under this section and the assessee has paid the amount of shortfall before furnishing the return of income under sub-section (1) of section 139.]

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

[16][**Expenditure on scientific research.**

[17]**35.** (1) In respect of expenditure on scientific research, the following deductions shall be allowed—

(*i*) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

[18][*Explanation.*—Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary [as defined in *Explanation 2*[19] below sub-section (5) of section 40A] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority[20] to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced ;]

[21](*ii*) [21a]**[***any sum paid***]** to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :

Provided that such association, university, college or institution is for the time being approved[22] for the purposes of this clause by the [22a]**[***prescribed authority***]** [23][by notification in the Official Gazette] ;

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16. Reintroduced with modification by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier section 35 was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

17. *See* also Press Note, dated 5-6-1982, issued by the Ministry of Finance (Department of Revenue). For details, *see* Taxmann's Master Guide to Income-tax Act.

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

18. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

19. Section 40A(5) has now been omitted. For text of omitted *Explanation 2* to section 40A(5), *see* footnote 10 on p. 1.226 *post*.

20. *See* rule 6(1). The prescribed authority under rule 6(1) is Director General (Income-tax Exemptions) in concurrence with Secretary, Department of Scientific & Industrial Research, Government of India.

21. *See* rule 6(2) and Form No. 3CF for form of application by scientific or industrial research institution.

21a. Words "an amount equal to one and one-fourth times of any sum paid" shall be substituted for "any sum paid" by the Finance Act, 1999, w.e.f. **1-4-2000**.

22. For complete list of approved scientific research university/institutions, etc., under this clause, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.537-1.686B.

22a. Words "Central Government" shall be substituted for "prescribed authority" by the Finance Act, 1999, w.e.f. **1-4-2000**.

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

[24][[25](*iii*) [25a]**[***any sum paid***]** to a university, college or other institution to be used for research in social science or statistical research :

Provided that such university, college or institution is for the time being approved[26] for the purposes of this clause by the [27]**[***prescribed authority***]** by notification in the Official Gazette ;]

(*iv*) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2) :

[28][**Provided** that the scientific research association, university, college or other institution referred to in clause (*ii*) or clause (*iii*) shall make an application in the prescribed form and manner to the [28a]**[***prescribed authority***]** for the purpose of grant of approval, or continuance thereof, under clause (*ii*) or, as the case may be, clause (*iii*) :

Provided further that the [28a]**[***prescribed authority***]** may, before granting approval under clause (*ii*) or clause (*iii*), call for such documents (including audited annual accounts) or information from the scientific research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the scientific research association, university, college or other institution and that authority may also make such inquiries as it may deem necessary in this behalf :

Provided also that any notification issued by the [28a]**[***prescribed authority***]** under clause (*ii*) or clause (*iii*) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification.]

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24. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to substitution, clause (*iii*), as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

"(*iii*) any sum paid to a university, college or other institution to be used for research in social science or statistical research related to the class of business carried on, being a university, college or institution which is for the time being approved for the purposes of this clause by the prescribed authority by notification in the Official Gazette ;"

25. *See* rule 6(2) and Form No. 3CF for form of application by Scientific and Industrial Research Institution.

25a. Words "an amount equal to one and one-fourth times of any sum paid" shall be substituted for "any sum paid" by the Finance Act, 1999, w.e.f. **1-4-2000**.

26. For complete list of approved social science or statistical research university/institutions, etc., under this clause, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.687-1.725.

27. Words "Central Government" shall be substituted for "prescribed authority" by the Finance Act, 1999, w.e.f. **1-4-2000**.

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

28a. Words "Central Government" shall be substituted for "prescribed authority" by the Finance Act, 1999, w.e.f. **1-4-2000**.

(2) For the purposes of clause (*iv*) of sub-section (1),—

[29][(*i*) in a case where such capital expenditure is incurred before the 1st day of April, 1967, one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year ; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years ;

(*ia*) in a case where such capital expenditure is incurred after the 31st day of March, 1967, the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year :]

[30][**Provided** that no deduction shall be admissible under this clause in respect of any expenditure incurred on the acquisition of any land, whether the land is acquired as such or as part of any property, after the 29th day of February, 1984.]

[31][*Explanation 1*].—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced.

[32][*Explanation 2*.—For the purposes of this clause,—

(*a*) "land" includes any interest in land ; and

(*b*) the acquisition of any land shall be deemed to have been made by the assessee on the date on which the instrument of transfer of such land to him has been registered under the Registration Act, 1908 (16 of 1908), or where he has taken or retained the possession of such land or any part thereof in part performance of a contract of the nature referred to in section 53A[33] of the Transfer of Property Act, 1882 (4 of 1882), the date on which he has so taken or retained possession of such land or part ;]

(*ii*) notwithstanding anything contained in clause (*i*), where an asset representing expenditure of a capital nature [34][incurred before the 1st day of April, 1967,] ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (*i*) falls short of the said expenditure, then—

(*a*) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

(*b*) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year ;

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29. Substituted for clause (*i*) by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

30. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

31. Existing *Explanation* renumbered as *Explanation 1*, *ibid.*

32. Inserted, *ibid.*

33. For text of section 53A of the Transfer of Property Act, *see* **Appendix One.**

34. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

(*iii*) if the asset mentioned in clause (*ii*) is sold, without having been used for other purposes, in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation ; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place ;

(*iv*) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under [35][clause (*ii*) of sub-section (1)] of section 32 for the same [36][or any other] previous year in respect of that asset ;

(*v*) where the asset [37][mentioned in clause (*ii*)] is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under [38][clause (*ii*) of sub-section (1)] of section 32.

[39][(2A) [40]Where [41][, before the 1st day of March, 1984,] the assessee pays any sum [42][(being any sum paid with a specific direction that the sum shall not be used for the acquisition of any land or building or construction of any building)] to a scientific research association or university or college or other institution referred to in clause (*ii*) of sub-section (1) [43][or to a public sector company] to be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority[44] having regard to the social, economic and industrial needs of India, then,—

(*a*) there shall be allowed a deduction of a sum equal to one and one-third times the sum so paid ; and

(*b*) no deduction in respect of such sum shall be allowed under clause (*ii*) of sub-section (1) for the same or any other assessment year.]

[43][*Explanation.*—For the purposes of this sub-section, "public sector company" shall have the same meaning as in clause (*b*) of the *Explanation* below sub-section (2B) of section 32A.]

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35. Substituted for "clauses (*i*), (*ii*), (*iia*), (*iii*) and (*vi*) of sub-section (1) or under sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

36. Inserted by the Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1962.

37. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

38. Substituted for "clauses (*i*), (*ii*) and (*iii*) of sub-section (1)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

39. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

40. For guidelines for approval of scientific research programmes and list of approved programmes, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.725-1.727.

41. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

42. Inserted by the Finance (No. 2) Act, 1983, w.e.f. 1-4-1984.

43. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

44. *See* rule 6(1). *See* footnote 20 on p. 1.178 *ante*.

[45][(2AA) [46]Where the assessee pays any sum to a National Laboratory [47][or a University or an Indian Institute of Technology] with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority[48], then—

(*a*) there shall be allowed a deduction of a sum equal to one and one-fourth times the sum so paid ; and

(*b*) no deduction in respect of such sum shall be allowed under any other provision of this Act :

[49][**Provided** that the prescribed authority shall, before granting approval, satisfy itself about the feasibility of carrying out the scientific research and shall submit its report to the Director General in such form as may be prescribed.[50]]

[51][*Explanation.*—For the purposes of this section,—

(*a*) "National Laboratory" means a scientific laboratory functioning at the national level under the aegis of the Indian Council of Agricultural Research, the Indian Council of Medical Research, the Council of Scientific and Industrial Research, the Defence Research and Development Organisation, the Department of Electronics, the Department of Bio-Technology or the Department of Atomic Energy

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45. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994.

46. *See* rules 6(3), 6(5), 6(6) and 6(7) and Form Nos. 3CG to 3CJ. The procedure laid down by rule 6 is, *inter alia*, as follows :

- Prescribed authority is Head of National Laboratory, University or IIT.
- The application for approval is to be made by the sponsor in Form No. 3CG.
- The National Laboratory, University or Indian Institute of Technology shall issue a receipt of payment for carrying out an approved programme of scientific research, in Form No. 3CI.
- The prescribed authority will grant approval only if the conditions mentioned in sub-rule (7) of rule 6 are satisfied.

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

48. *See* rule 6(1A). Prescribed authority is head of the National Laboratory or the University or Indian Institute of Technology, as the case may be.

49. Substituted for the following provisos by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996. Prior to their substitution, the said provisos, as amended by the Finance Act, 1994, w.e.f. 1-4-1995, read as under :

"**Provided** that every National Laboratory or University or Indian Institute of Technology desirous of obtaining approval under this sub-section shall make an application in the prescribed form and manner to the prescribed authority :

Provided further that the prescribed authority may, before granting approval, call for such documents or information from the National Laboratory or the University or the Indian Institute of Technology as it thinks necessary in order to satisfy itself about the genuineness of the activities relating to scientific research of such Laboratory or University or Institute, as the case may be."

50. *See* rule 6(7)(*b*) and Form No. 3CJ.

51. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to substitution the *Explanation*, as inserted by the Finance Act, 1993, w.e.f. 1-4-1994, read as under :

'*Explanation.*—For the purposes of this sub-section, "National Laboratory" means a scientific laboratory functioning at the national level under aegis of the Indian Council of Agricultural Research, the Indian Council of Medical Research or the Council of Scientific and Industrial Research and which is approved as a National Laboratory by the prescribed authority in such manner as may be prescribed.'

and which is approved as a National Laboratory by the prescribed authority in such manner as may be prescribed ;

(*b*) "University" shall have the same meaning as in *Explanation* to clause (*ix*) of section 47 ;

(*c*) "Indian Institute of Technology" shall have the same meaning as that of "Institute" in clause (*g*) of section 3[52] of the Institutes of Technology Act, 1961 (59 of 1961)].

[53][(2AB)(*1*) Where a company engaged in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority[54], then, there shall be allowed a deduction of a sum equal to one and one-fourth times of the expenditure so incurred.

(*2*) No deduction shall be allowed in respect of the expenditure mentioned in clause (*1*) under any other provision of this Act.

(*3*) No company shall be entitled for deduction under clause (*1*) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility.

(*4*) The prescribed authority shall submit its report in relation to the approval of the said facility to the Director General in such form and within such time as may be prescribed.]

[55][(*5*) No deduction shall be allowed in respect of the expenditure referred to in clause (*1*) which is incurred after the 31st day of March, [55a]**[***2000***]**.]

[56][(2B)(*a*) Where [57][, before the 1st day of March, 1984,] an assessee has incurred any expenditure (not being in the nature of capital expenditure incurred on the acquisition of any land or building or construction of any building) on scientific research undertaken under a programme approved in this behalf by the prescribed authority having regard to the social, economic and industrial needs of India, he shall, subject to the provisions of this sub-section, be allowed a deduction of a sum equal to one and one-fourth times the amount of the expenditure certified by the prescribed authority to have been so incurred during the previous year.

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52. For definition of "Institute", *see* footnote 85 on page 1.55 *ante*.

53. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998. See rule 6(1B), (4), (5A) and (7A) and Form Nos. 3CK to 3CM.

54. Prescribed authority is Secretary, Department of Scientific & Industrial Research, Government of India.

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

55a. Figures "2005" shall be substituted for "2000" by the Finance Act, 1999, w.e.f. **1-4-2000**.

56. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.
For guidelines for approval of scientific research programmes under this sub-section, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.729-1.733

57. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

(*b*) Where a deduction has been allowed under clause (*a*) for any previous year in respect of any expenditure, no deduction in respect of such expenditure shall be allowed under clause (*i*) of sub-section (1) or clause (*ia*) of sub-section (2) for the same or any other previous year.

(*c*) Where a deduction is allowed for any previous year under this sub-section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed in respect of that asset under [58][clause (*ii*) of sub-section (1)] of section 32 for the same or any subsequent previous year.

(*d*) Any deduction made under this sub-section in respect of any expenditure on scientific research in excess of the expenditure actually incurred shall be deemed to have been wrongly made for the purposes of this Act if the assessee fails to furnish within one year of the period allowed by the prescribed authority for completion of the programme, a certificate of its completion obtained from that authority, and the provisions of sub-section (5B) of section 155 shall apply accordingly.]

(3) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question to the prescribed authority[59], whose decision shall be final.

The following sub-section (3) shall be substituted for existing sub-section (3) of section 35 by the Finance Act, 1999, w.e.f. 1-4-2000 :

(3) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the Board shall refer the question to—

*(*a*) the Central Government, when such question relates to any activity under clauses (*ii*) and (*iii*) of sub-section (1), and its decision shall be final;*

*(*b*) the prescribed authority, when such question relates to any activity other than the activity specified in clause (*a*), whose decision shall be final.*

(4) The provisions of sub-section (2) of section 32 shall apply in relation to deductions allowable under clause (*iv*) of sub-section (1) as they apply in relation to deductions allowable in respect of depreciation.

[60][(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing expenditure of a capital nature on scientific research,—

(*i*) the amalgamating company shall not be allowed the deduction under clause (*ii*) or clause (*iii*) of sub-section (2); and

58. Substituted for "clauses (*i*), (*ii*), (*iia*) and (*iii*) of sub-section (1) or under sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

59. *See* rule 6.

60. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

(*ii*) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.]]

[61][**Expenditure on acquisition of patent rights or copyrights.**

35A. (1) In respect of any expenditure of a capital nature incurred after the 28th day of February, 1966 [62][*but before the 1st day of April, 1998*], on the acquisition of patent rights or copyrights (hereafter, in this section, referred to as rights) used for the purposes of the business, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

Explanation.—For the purposes of this section,—

(*i*) "relevant previous years" means the fourteen previous years beginning with the previous year in which such expenditure is incurred or, where such expenditure is incurred before the commencement of the business, the fourteen previous years beginning with the previous year in which the business commenced :

Provided that where the rights commenced, that is to say, became effective, in any year prior to the previous year in which expenditure on the acquisition thereof was incurred by the assessee, this clause shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years less the number of complete years which, when the rights are acquired by the assessee, have elapsed since the commencement thereof, and if fourteen years have elapsed as aforesaid, of a reference to one year;

(*ii*) "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the number of the relevant previous years.

(2) Where the rights come to an end without being subsequently revived or where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) are not less than the cost of acquisition thereof remaining unallowed, no deduction under sub-section (1) shall be allowed in respect of the previous year in which the rights come to an end or, as the case may be, the whole or any part of the rights is sold or in respect of any subsequent previous year.

(3) Where the rights either come to an end without being subsequently revived or are sold in their entirety and the proceeds of the sale (so far as they consist of capital sums) are less than the cost of acquisition thereof remaining unallowed, a deduction equal to such cost remaining unallowed, or, as the case may be, such cost remaining unallowed as reduced by the proceeds of the sale, shall be allowed in respect of the previous year in which the rights come to an end, or, as the case may be, are sold.

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61. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

62. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

(4) Where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) exceed the amount of the cost of acquisition thereof remaining unallowed, so much of the excess as does not exceed the difference between the cost of acquisition of the rights and the amount of such cost remaining unallowed shall be chargeable to income-tax as income of the business of the previous year in which the whole or any part of the rights is sold.

Explanation.—Where the whole or any part of the rights is sold in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(5) Where a part of the rights is sold and sub-section (4) does not apply, the amount of the deduction to be allowed under sub-section (1) shall be arrived at by—

(*a*) subtracting the proceeds of the sale (so far as they consist of capital sums) from the amount of the cost of acquisition of the rights remaining unallowed; and

(*b*) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the rights are sold.]

[63][(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the rights to the amalgamated company (being an Indian company),—

(*i*) the provisions of sub-sections (3) and (4) shall not apply in the case of the amalgamating company; and

(*ii*) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the rights.]

The following sub-section (7) shall be inserted after sub-section (6) of section 35A by the Finance Act, 1999, w.e.f. 1-4-2000 :

(7) Where in a scheme of demerger, the demerged company sells or otherwise transfers the rights to the resulting company (being an Indian company),—

*(*i*) the provisions of sub-sections (3) and (4) shall not apply in the case of the demerged company; and*

*(*ii*) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the latter had not sold or otherwise transferred the rights.*

[64][**Expenditure on know-how.**

35AB. (1) Subject to the provisions of sub-section (2), where the assessee has paid in any previous year [65][*relevant to the assessment year commencing on or before the 1st day of April, 1998*] any lump sum consideration for acquiring any know-how for use for the purposes of his business, one-sixth of the amount

63. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

64. Inserted by the Finance Act, 1985, w.e.f. 1-4-1986.

65. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal instalments for each of the five immediately succeeding previous years.

(2) Where the know-how referred to in sub-section (1) is developed in a laboratory, university or institution referred to in sub-section (2B) of section 32A, one-third of the said lump sum consideration paid in the previous year by the assessee shall be deducted in computing the profits and gains of the business for that year, and the balance amount shall be deducted in equal instalments for each of the two immediately succeeding previous years.

The following sub-section (3) shall be inserted after sub-section (2) of section 35AB by the Finance Act, 1999, w.e.f. 1-4-2000 :

(3) Where there is a transfer of an undertaking under a scheme of amalgamation or demerger and the amalgamating or the demerged company is entitled to a deduction under this section, then, the amalgamated company or the resulting company, as the case may be, shall be entitled to claim deduction under this section in respect of such undertaking to the same extent and in respect of the residual period as it would have been allowable to the amalgamating company or the demerged company, as the case may be, had such amalgamation or demerger not taken place.

Explanation.—For the purposes of this section, "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil well or other sources of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto).]

[66][**Expenditure for obtaining licence to operate telecommunication services.**

35ABB. (1) In respect of any expenditure, being in the nature of capital expenditure, incurred for acquiring any right to operate telecommunication services [66a]**[***either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year***]** and for which payment has actually been made to obtain a licence, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

Explanation.—For the purposes of this section,—

[66b]**[***(*i) *"relevant previous years" means,—*

*(*A) *in a case where the licence fee is actually paid before the commencement of the business to operate telecommunication*

66. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1996.

66a. Inserted by the Finance Act, 1999, w.r.e.f. **1-4-1996.**

66b. Substituted, *ibid*. Prior to its substitution, clause (*i*), as inserted by the Finance Act, 1997, w.r.e.f 1-4-1996, read as under :

'(*i*) "relevant previous years" means the previous years beginning with the previous year in which the licence fee is actually paid and the subsequent previous year or years during which the licence, for which the fee is paid, shall be in force;'

services, the previous years beginning with the previous year in which such business commenced;

(B) in any other case, the previous years beginning with the previous year in which the licence fee is actually paid,

*and the subsequent previous year or years during which the licence, for which the fee is paid, shall be in force;***]**

(*ii*) "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the total number of the relevant previous years;

(*iii*) "payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

(2) Where the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of the transfer, shall be allowed in respect of the previous year in which the licence is transferred.

(3) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred to obtain the licence and the amount of such expenditure remaining unallowed shall be chargeable to income-tax as profits and gains of the business in the previous year in which the licence has been transferred.

Explanation.—Where the licence is transferred in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(4) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are not less than the amount of expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed under sub-section (1) in respect of the previous year in which the licence is transferred or in respect of any subsequent previous year or years.

(5) Where a part of the licence is transferred in a previous year and sub-section (3) does not apply, the deduction to be allowed under sub-section (1) for expenditure incurred remaining unallowed shall be arrived at by—

(*a*) subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed; and

(*b*) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the licence is transferred.

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the licence to the amalgamated company (being an Indian company),—

(*i*) the provisions of sub-sections (2), (3) and (4) shall not apply in the case of the amalgamating company; and

(*ii*) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the licence.]

The following sub-section (7) shall be inserted after sub-section (6) of section 35ABB by the Finance Act, 1999, w.e.f. 1-4-2000 :

(7) Where, in a scheme of demerger, the demerged company sells or otherwise transfers the licence to the resulting company (being an Indian company),—

*(*i) *the provisions of sub-sections (2), (3) and (4) shall not apply in the case of the demerged company; and*

*(*ii) *the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company if the latter had not transferred the licence.*

[66c]**[***(8) Where a deduction for any previous year under sub-section (1) is claimed and allowed in respect of any expenditure referred to in that sub-section, no deduction shall be allowed under sub-section (1) of section 32 for the same previous year or any subsequent previous year.***]**

[67][**Expenditure on eligible projects or schemes.**[68]

35AC. (1) Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved[69] by the National Committee [70]for carrying out any eligible project or scheme, the assessee shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year :

Provided that a company may, for claiming the deduction under this sub-section, incur expenditure either by way of payment of any sum as aforesaid or directly on the eligible project or scheme.

(2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate—

[71](*a*) where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from

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66c. Inserted by the Finance Act, 1999, w.r.e.f. **1-4-1996**.

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

68. *See* rules 11F to 11-O and Form Nos. 58A and 58B for 'Rules relating to National Committee for Promotion of Social and Economic Welfare'.

69. The prescribed authority under rule 11L is Secretary to National Committee for Promotion of Social and Economic Welfare, Department of Revenue, Government of India. *See* rule 11L for form of application (in two sets) to be submitted for approval of association/institution or for recommendation of project/scheme.

70. For constitution of National Committee for Promotion of Social and Economic Welfare and appointment of members thereof, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.733-1.736

71. *See* rule 11-O(1) and Form No. 58A for certificate of expenditure by way of payment *qua* eligible projects/schemes from public sector company/local authority, etc.

such public sector company or local authority or, as the case may be, association or institution;

[72](*b*) in any other case, from an accountant, as defined in the *Explanation* below sub-section (2) of section 288,

in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

[73][(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted, it may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (*b*) of the *Explanation* and subsequently the National Committee is satisfied that the project or the scheme is not being carried out in accordance with all or any of the conditions subject to which such project or scheme was notified, such notification may be withdrawn in the same manner in which it was issued :

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or the local authority, as the case may be.]

Explanation.—For the purposes of this section,—

(*a*) "National Committee" means the Committee constituted by the Central Government, from amongst persons of eminence in public life, in accordance with the rules made under this Act;

(*b*) "eligible project or scheme" means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as the Central Government may, by notification in the Official Gazette, specify[74] in this behalf on the recommendations of the National Committee.]

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72. *See* rule 11-O(2) and Form No. 58B for certificate of payment/expenditure directly incurred by company *qua* eligible projects/schemes from chartered accountant.

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

74. For notified eligible projects and schemes, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.736-1.970E.

Export markets development allowance.

[75]**35B.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35B was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.*]

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75. Immediately prior to its omission, section 35B, as amended by the Finance Act, 1973, with retrospective effect from 1-4-1968, Direct Taxes (Amendment) Act, 1974, with retrospective effect from 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Finance Act, 1979, w.e.f. 1-4-1980, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and Finance Act, 1983, w.e.f. 1-4-1983, stood as under :

'35B. *Export markets development allowance.*—(1)(*a*) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February, 1968 but before the 1st day of March, 1983, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (*b*), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year:

Provided that in respect of the expenditure incurred after the 28th day of February, 1973, but before the 1st day of April, 1978, by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times", the words "one and one-half times" had been substituted.

(*b*) The expenditure referred to in clause (*a*) is that incurred wholly and exclusively on—

(*i*) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;

(*ii*) [***]

(*iii*) [***]

(*iv*) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;

(*v*) [***]

(*vi*) [***]

(*vii*) travelling outside India for the promotion of the sale outside India of such goods, services or facilities, including travelling outward from, and return to, India;

(*viii*) [***]

(*ix*) such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed.

Explanation 1.—In this section, "domestic company" shall have the meaning assigned to it in clause (*2*) of section 80B.

Explanation 2.—For the removal of doubts, it is hereby declared that nothing in clause (*b*) shall be construed to include any expenditure which is in the nature of purchasing and manufacturing expenses ordinarily debitable to the trading or manufacturing account and not to the profit and loss account.

(1A) [***]

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.'

Agricultural development allowance.

[76]**35C.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35C was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.*]

Rural development allowance.

[77]**35CC.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35CC was inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977.*]

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76. Immediately prior to its omission, section 35C, as amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance Act, 1983, w.e.f. 1-4-1984 and Finance Act, 1984, w.e.f. 1-4-1984, stood as under :

"35C. *Agricultural development allowance.*—(1)(*a*) Where any company or a co-operative society is engaged in the manufacture or processing of any article or thing which is made from, or uses in such manufacture or processing as raw material, any product of agriculture, animal husbandry, or dairy or poultry farming, and has incurred, after the 29th day of February, 1968 but before the 1st day of March, 1984, whether directly or through an association or body which has been approved for the purposes of this section by the prescribed authority, any expenditure in the provision of any goods, services or facilities specified in clause (*b*) to a person (not being a person referred to in clause (*b*) of sub-section (2) of section 40A) who is a cultivator, grower or producer of such product in India, the company or co-operative society shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year.

(*b*) The goods, services or facilities referred to in clause (*a*) are the following :—

(*i*) fertilisers, seeds, pesticides, concentrates for cattle and poultry feed, tools or implements, for use by such cultivator, grower or producer;

(*ii*) dissemination of information on, or demonstration of, modern techniques or methods of agriculture, animal husbandry, or dairy or poultry farming, or advice on such techniques or methods;

(*iii*) such other goods, services or facilities as may be prescribed.

Explanation.—In computing the expenditure which is to be allowed as deduction under this section, the amount, if any, received by the company or co-operative society in consideration of, or as compensation for, such goods, services or facilities shall be deducted.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure of the nature specified in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year."

77. Immediately prior to its omission, section 35CC, as amended by the Finance Act, 1983, w.e.f. 1-4-1983 and Finance Act, 1985, w.e.f. 17-3-1985, stood as under :

'35CC. *Rural development allowance.*—(1) Where the assessee, being a company or a co-operative society, incurs any expenditure on any programme of rural development, the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year :

Provided that the approval of the prescribed authority has been obtained by the assessee in respect of such programme before incurring the expenditure :

Provided further that the prescribed authority shall not approve any programme unless such programme is a programme falling within any such class or category of programmes of rural development as may be specified by the Central Government in this behalf:

(Contd. on p. 1.193)

[78][**Expenditure by way of payment to associations and institutions for carrying out rural development programmes.**

[79]**35CCA.** [80][(1) Where an assessee incurs any expenditure by way of payment of any sum—

(*a*) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out

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(Contd. from p. 1.192)

Provided also that no programme shall be approved under this section after the 16th day of March, 1985.

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

(*a*) "programme of rural development" includes any programme for promoting the social and economic welfare of, or the uplift of, the public in any rural area;

(*b*) "rural area" means any area other than—

(*i*) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(*ii*) an area within such distance, not being more than fifteen kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (*i*), as the Central Government may, having regard to the stage of development of such area (including the extent of, and scope for, urbanisation of such area) and other relevant considerations, specify in this behalf by notification in the Official Gazette.

(2) Where the expenditure referred to in sub-section (1) results in the acquisition or creation of an asset, being building, machinery, plant or furniture, and the assessee does not divest itself of the ownership of such asset before the end of the previous year, no deduction in respect of such expenditure shall be allowed under sub-section (1) but the assessee shall be entitled to the allowance for depreciation in respect of the asset so acquired or created as if such asset was used for the purposes of the business and the provisions of sections 32, 34, 41 and 43 shall, so far as may be, apply accordingly.

(3) No deduction shall be allowed in respect of the expenditure referred to in sub-section (1) unless the assessee furnishes, along with the return of income for the assessment year for which the deduction is claimed, a statement of such expenditure in the prescribed form duly signed and verified by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and setting forth such particulars as may be prescribed.

(4) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.'

78. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Section 35CCA was earlier omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 35CCA was inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

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

80. Substituted by the Finance Act, 1979, w.e.f. 1-6-1979.

For guidelines for approval of programmes of rural development, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 1, pp. 1.983-1.988.

any programme of rural development approved by the prescribed authority[81]; or

(*b*) to an association or institution, which has as its object the training of persons for implementing programmes of rural development; [82][or]

[82][(*c*) to a rural development fund set up and notified[83] by the Central Government in this [84][behalf; or]

[85][(*d*) to the National Urban Poverty Eradication Fund set up and notified by the Central Government in this behalf,]

the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.]

[86][(2) The deduction under clause (*a*) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution referred to in the said clause unless the assessee furnishes a certificate from such association or institution to the effect that—

(*a*) the programme of rural development had been approved by the prescribed authority before the 1st day of March, 1983; and

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81. The "prescribed authority" under rule 6AAA to approve the programme of rural development shall be the Committee consisting of the following namely :—

(*a*) The Chief Commissioner or Commissioner of Income-tax who exercises jurisdiction over the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out—*Chairman;*

(*b*) An officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out - *Member;*

The "prescribed authority" to approve an association or institution shall be the Committee consisting of the following, namely:—

(*a*) The Chief Commissioner or Commissioner of Income-tax, who exercises jurisdiction over the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated - *Chairman;*

(*b*) An Officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated - *Member*;

Where two or more Commissioners exercise jurisdiction over the State or, as the case may be, the Union territory, the Board may, by notification in the Official Gazette, empower the Chief Commissioner or Commissioner specified in this behalf to be the Chairman of the Committee.

82. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

83. National Fund for Rural Development has since been notified. For details, *see* Taxmann's Master Guide to Income-tax Act.

84. Substituted for "behalf" by the Finance Act, 1995, w.e.f. 1-4-1996.

85. Inserted, *ibid*.

86. Substituted for following sub-section (2), which was earlier substituted by the Finance Act, 1979, w.e.f. 1-6-1979, by the Finance Act, 1983, w.e.f. 1-4-1983 :

"(2) The deduction under sub-section (1) shall not be allowed with respect to expenditure by way of payment of any sum to any association or institution, unless such association or institution is for the time being approved in this behalf by the prescribed authority :

Provided that the prescribed authority shall not grant such approval for more than three years at a time."

(*b*) where such payment is made after the 28th day of February, 1983, such programme involves work by way of construction of any building or other structure (whether for use as a dispensary, school, training or welfare centre, workshop or for any other purpose) or the laying of any road or the construction or boring of a well or tube-well or the installation of any plant or machinery, and such work has commenced before the 1st day of March, 1983.]

[87][(2A) The deduction under clause (*b*) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution unless the assessee furnishes a certificate from such association or institution to the effect that—

(*a*) the prescribed authority had approved the association or institution before the 1st day of March, 1983; and

(*b*) the training of persons for implementing any programme of rural development had been started by the association or institution before the 1st day of March, 1983.]

[87][(2B) No certificate of the nature referred to in sub-section (2) or sub-section (2A) shall be issued by any association or institution unless such association or institution has obtained from the prescribed authority authorisation in writing to issue certificates of such nature.]

Explanation.—For the purposes of this section, "programme of rural development" shall have the meaning assigned to it in the *Explanation* to sub-section (1) of section 35CC.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under section 35C or section 35CC or section 80G or any other provision of this Act for the same or any other assessment year.]

[88][**Expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural resources.**

35CCB. [89][(1) Where an assessee incurs any expenditure by way of payment of any sum—

(*a*) to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources or of affore-

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87. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

88. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 35CCB was inserted by the Finance Act, 1982, w.e.f. 1-6-1982.

89. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991. Earlier sub-section (1) read as under : "(1) Where an assessee incurs any expenditure by way of payment of any sum to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources, to be used for carrying out any programme of conservation of natural resources approved by the prescribed authority, the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year."

station, to be used for carrying out any programme of conservation of natural resources or afforestation approved[90] by the prescribed authority[91]; or

(*b*) to such fund for afforestation as may be notified by the Central Government,

the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.]

(2) The deduction under [92][clause (*a*) of] sub-section (1) shall not be allowed with respect to expenditure by way of payment of any sum to any association or institution, unless such association or institution is for the time being approved in this behalf by the prescribed authority[93] :

Provided that the prescribed authority shall not grant such approval for more than three years at a time.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.]

[94][**Amortisation of certain preliminary expenses.**

[95]**35D.** (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2),—

(*i*) before the commencement of his business, or

(*ii*) after the commencement of his business, in connection with the extension of his industrial undertaking or in connection with his setting up a new industrial unit,

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the industrial undertaking is completed or the new industrial unit commences production or operation :

[96][**Provided** *that where an assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words "an amount equal to one-tenth of such expenditure for each of the ten successive previous years", the words "an amount equal to one-*

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90. For list of approved associations or institutions, *see* Taxmann's Master Guide to Income-tax Act.

91. The prescribed authority under rule 6AAC is Secretary, Department of Environment, Government of India.

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

93. *See* rule 6AAC. The prescribed authority is Secretary, Department of Environment, Government of India.

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

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

96. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

fifth of such expenditure for each of the five successive previous years" had been substituted.]

(2) The expenditure referred to in sub-section (1) shall be the expenditure specified in any one or more of the following clauses, namely :—

(*a*) expenditure in connection with—

(*i*) preparation of feasibility report;

(*ii*) preparation of project report;

(*iii*) conducting market survey or any other survey necessary for the business of the assessee;

(*iv*) engineering services relating to the business of the assessee :

Provided that the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in this clause is carried out by the assessee himself or by a concern which is for the time being approved[97] in this behalf by the Board;

(*b*) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;

(*c*) where the assessee is a company, also expenditure—

(*i*) by way of legal charges for drafting the Memorandum and Articles of Association of the company;

(*ii*) on printing of the Memorandum and Articles of Association;

(*iii*) by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956);

(*iv*) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

(*d*) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed.

(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds an amount calculated at two and one-half per cent—

(*a*) of the cost of the project, or

(*b*) where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company,

the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1) :

97. For list of approved concerns, *see* Taxmann's Master Guide to Income-tax Act.

[98][**Provided** *that where the aggregate amount of expenditure referred to in sub-section (2) is incurred after the 31st day of March, 1998, the provisions of this sub-section shall have effect as if for the words "two and one-half per cent", the words "five per cent" had been substituted.*]

Explanation.—In this sub-section—

(*a*) "cost of the project" means—

(*i*) in a case referred to in clause (*i*) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences;

(*ii*) in a case referred to in clause (*ii*) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the extension of the industrial undertaking is completed or, as the case may be, the new industrial unit commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the industrial undertaking or the setting up of the new industrial unit of the assessee;

(*b*) "capital employed in the business of the company" means—

(*i*) in a case referred to in clause (*i*) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences;

(*ii*) in a case referred to in clause (*ii*) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the extension of the industrial undertaking is completed, or, as the case may be, the new industrial unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the industrial undertaking or the setting up of the new industrial unit of the company;

(*c*) "long-term borrowings" means—

(*i*) any moneys borrowed by the company from the Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which is for the time being approved by the Central Government for the purposes of clause (*viii*) of sub-section (1) of

98. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

section 36 or any banking institution (not being a financial institution referred to above), or

(*ii*) any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery, where the terms under which such moneys are borrowed or the debt is incurred provide for the repayment thereof during a period of not less than seven years.

(4) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288, and the assessee furnishes, along with his return of income for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form[99] duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(5) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation,—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; and

(*ii*) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

The following sub-section (5A) shall be inserted after sub-section (5) of section 35D by the Finance Act, 1999, w.e.f. 1-4-2000 :

(5A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in sub-section (1), to another company in a scheme of demerger,—

*(*i) *no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and*

*(*ii) *the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.*

(6) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

99. *See* rule 6AB and Form No. 3B for audit report to be filed by assessee other than company or a co-operative society under section 35D(4).

The following section 35DD shall be inserted after section 35D by the Finance Act, 1999, w.e.f. 1-4-2000 :

Amortisation of expenditure in case of amalgamation or demerger.

35DD. *(1) Where an assessee, being an Indian company, incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.*

(2) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.

[1][**Deduction for expenditure on prospecting, etc., for certain minerals.**

35E. (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, is engaged in any operations relating to prospecting for, or extraction or production of, any mineral and incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2), the assessee shall, in accordance with and subject to the provisions of this section, be allowed for each one of the relevant previous years a deduction of an amount equal to one-tenth of the amount of such expenditure.

(2) The expenditure referred to in sub-section (1) is that incurred by the assessee after the date specified in that sub-section at any time during the year of commercial production and any one or more of the four years immediately preceding that year, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals :

Provided that there shall be excluded from such expenditure any portion thereof which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

(3) Any expenditure—

(*i*) on the acquisition of the site of the source of any mineral or group of associated minerals referred to in sub-section (2) or of any rights in or over such site;

(*ii*) on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or

(*iii*) of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 32,

shall not be deemed to be expenditure incurred by the assessee for any of the purposes specified in sub-section (2).

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

(4) The deduction to be allowed under sub-section (1) for any relevant previous year shall be—

(*a*) an amount equal to one-tenth of the expenditure specified in sub-section (2) (such one-tenth being hereafter in this sub-section referred to as the instalment); or

(*b*) such amount as is sufficient to reduce to *nil* the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploitation [whether or not such commercial exploitation is as a result of the operations or development referred to in sub-section (2)] of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid in respect of which the expenditure was incurred,

whichever amount is less :

Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so, however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial production.

(5) For the purposes of this section,—

(*a*) "operation relating to prospecting" means any operation undertaken for the purposes of exploring, locating or proving deposits of any mineral, and includes any such operation which proves to be infructuous or abortive;

(*b*) "year of commercial production" means the previous year in which as a result of any operation relating to prospecting, commercial production of any mineral or any one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule, commences;

(*c*) "relevant previous years" means the ten previous years beginning with the year of commercial production.

(6) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288, and the assessee furnishes, along with his return of income for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form[2] duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(7) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of

2. *See* rule 6AB and Form No. 3B for audit report to be filed by assessee other than company or co-operative society under section 35E(6).

ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; and

(*ii*) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

The following sub-section (7A) shall be inserted after sub-section (7) of section 35E by the Finance Act, 1999, w.e.f. 1-4-2000 :

(7A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of demerger,—

(i) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and

(ii) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the demerger had not taken place.

(8) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

Other deductions.

[3]**36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

[4](*i*) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

3. *See* also Circular No. 4-P(LVIII-30), dated 25-11-1965, Circular No. 44(3)-IT/49, dated 12-2-1949, Circular No. 110, dated 13-4-1973, Letter [F. No. 44/13/64-ITJ], dated 6-9-1964, Letter [F. No. 216/6/77-IT(A-II)], dated 7-6-1978, Circular No. 403, dated 5-12-1984, Circular No. 30(XLVII-18), dated 30-11-1964, Circular No. 14, dated 23-4-1969, Extracts from Minutes (Item 31) of Ninth Meeting of DTAC held on 5-11-1966, Circular dated 6-10-1952, extracted from *CIT* v. *Corporation Bank Ltd.* [1986] 157 ITR 509 (Kar.), Circular No. 20, dated 13-6-1969, Extracts of Instruction No. 370 [F. No. 205/15/71-IT(A-II)], dated 13-1-1972 and Letter [F. No. 10/66/61-IT(A-I)], dated 16-1-1962. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

[5][(*ia*) the amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;]

[6][(*ib*) the amount of any premium paid by cheque by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government;]

[7](*ii*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

[8][* * *]

[9][* * *]

[9a][10][(*iia*) *a sum equal to one and one-third times the amount of the expenditure incurred on payment of any salary* [11]*[for any period of employment before the 1st day of March, 1984] to an employee who, as at the end of the previous year,—*

(a) *is totally blind, or*

(b) *is subject to or suffers from a permanent physical disability (other than blindness) which has the effect of reducing substantially his capacity to engage in a gainful employment or occupation :*

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5. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.
6. Inserted by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987.
7. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.
8. First proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, first proviso, as inserted by the Payment of Bonus (Amendment) Act, 1976, with retrospective effect from 25-9-1975, stood as under:
"**Provided** that the deduction in respect of bonus paid to an employee employed in a factory or other establishment to which the provisions of the Payment of Bonus Act, 1965 (21 of 1965), apply shall not exceed the amount of bonus payable under that Act."
9. Second proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, second proviso, as substituted by the Payment of Bonus (Amendment) Act, 1976, with retrospective effect from 25-9-1975, stood as under:
"**Provided further** that the amount of the bonus (not being bonus referred to in the first proviso) or commission is reasonable with reference to—
(*a*) the pay of the employee and the conditions of his service;
(*b*) the profits of the business or profession for the previous year in question; and
(*c*) the general practice in similar business or profession."

9a. Clause (*iia*) shall be omitted by the Finance Act, 1999, w.e.f. **1-4-2000**.

10. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.
11. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

Provided *that the assessee produces before the* [12]*[Assessing] Officer, in respect of the first assessment year for which deduction is claimed in relation to each such employee under this clause,—*

(i) *in a case referred to in sub-clause (*a*), a certificate as to his total blindness from a registered medical practitioner being an oculist; and*

(ii) *in a case referred to in sub-clause (*b*), a certificate as to the permanent physical disability referred to in the said sub-clause from a registered medical practitioner :*

Provided further *that nothing contained in this clause shall apply in the case of an employee whose income in the previous year chargeable under the head "Salaries" exceeds twenty thousand rupees.*

Explanation 1.—*In this clause, "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise.*

Explanation 2. —*For the removal of doubts, it is hereby declared that where a deduction under this clause is allowed for any assessment year in respect of any expenditure, deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year;*]**]**

[13](*iii*) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession.

Explanation.—Recurring subscriptions paid periodically by share-holders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

[13](*iv*) [14]any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such [15]conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the number of members of the fund;

[16](*v*) [17]any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

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12. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
13. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.
14. *See* rules 75, 87 and 88.
15. For conditions specified by the Board, *see* Taxmann's Master Guide to Income-tax Act.
16. *See* rules 103 and 104.
17. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

[18][(*va*) any sum received by the assessee from any of his employees to which the provisions of sub-clause (*x*) of clause (*24*) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

Explanation.—For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise;]

[19](*vi*) in respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes the difference between the actual cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

[20](*vii*) subject to the provisions of sub-section (2), the amount of [21][any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year]:

[22][**Provided** that in the case of [23][an assessee] to which clause (*viia*) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause;]

[24][(*viia*) [25][[26]in respect of any provision for bad and doubtful debts made by—

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

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

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

21. Substituted for "any debt, or part thereof, which is established to have become a bad debt in the previous year" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

22. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

23. Substituted for "a bank" by the Finance Act, 1997, w.r.e.f. 1-4-1992.

24. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

25. Substituted for the following by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987:
"in respect of any provision for bad and doubtful debts made by a scheduled bank (not being a bank approved by the Central Government for the purposes of clause (*viiia*) or a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank, an amount not exceeding ten per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) or an amount not exceeding two per cent of the aggregate average advances made by the rural branches of such bank, computed in the prescribed manner, whichever is higher."
Earlier, above opening para of clause (*viia*) was substituted by the Finance Act, 1985, w.e.f. 1-4-1985. It was also amended by the Finance Act, 1982, w.e.f. 1-4-1983.

26. Rule 6ABA provides that the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely:—

(*a*) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;

(Contd. on p. 1.206)

(*a*) a scheduled bank [not being [27][* * *] a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [28][ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner;

The following proviso and Explanation shall be inserted to sub-clause (a) of clause (viia) of sub-section (1) of section 36 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Provided *that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year.*

Explanation.—*For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005.*

(*b*) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA);]

[29][(*c*) a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA).]

(Contd. from p. 1.205)

(*b*) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (*a*);

(*c*) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.

27. Words "a bank approved by the Central Government for the purposes of clause (*viiia*) or" omitted by the Finance Act, 1994, w.e.f. 1-4-1995.

28. Substituted for "four", *ibid.* Earlier "four" was substituted for "two" by the Finance Act, 1993, w.e.f. 1-4-1994.

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

Explanation.—For the purposes of this clause,—

[30][(*i*) "non-scheduled bank" means a [31]banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank;]

[32][(*ia*)] "rural branch" means a branch of a scheduled bank [33][or a non-scheduled bank] situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

[34][(*ii*) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), but does not include a co-operative bank;]

[35][(*iii*) "public financial institution" shall have the meaning assigned to it in [36]section 4A of the Companies Act, 1956 (1 of 1956);

(*iv*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*v*) "State industrial investment corporation" means a [37]Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and approved by the Central Government under clause (*viii*) of this sub-section;]

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30. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

31. Section 5(*c*) of the Banking Regulation Act, 1949, defines "banking company" as follows:

'(*c*) "banking company" means any company which transacts the business of banking in India.

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;'

32. Relettered by the Finance Act, 1982, w.e.f. 1-4-1983.

33. Inserted, *ibid.*

34. Substituted for the following clause (*ii*), [as amended by the Finance Act, 1985, w.e.f. 1-4-1985] by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 :

'(*ii*) "scheduled bank" has the same meaning as in the *Explanation* to clause (*iii*) of sub-section (5) of section 11, but does not include a co-operative bank;'

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

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

37. For definition of "Government company", *see* footnote 18 on page 1.19 *ante*.

(*viii*) [38][in respect of any special reserve created [39][and maintained] by a financial corporation which is engaged in providing long-term finance for [40][industrial or agricultural development or development of infrastructure facility in India or by a 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, an amount not exceeding forty per cent of the profits derived from such business of providing long-term finance (computed under the head "Profits and gains of business or profession" [41][before making any deduction under this clause]) carried to such reserve account:]

[41a]**[Provided** *that the corporation* [42]*[or, as the case may be, the company] is for the time being approved*[43] *by the Central Government for the purposes of this clause :***]**

Provided [43a]**[further]** that where the aggregate of the amounts carried to such reserve account from time to time exceeds [44][twice the amount of] the paid-up share capital [45][and of the general reserves] of the corporation [45a][or, as the case may be, the company], no allowance under this clause shall be made in respect of such excess.

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38. Operative part of this clause was amended first by the Finance Act, 1966, w.e.f. 1-4-1966 and then by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and then by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972 and then by the Finance Act, 1974, w.e.f. 1-4-1975.

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

40. Substituted for the portion beginning with the words "industrial or agricultural development in India" and ending with the words "such reserve account" by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its substitution, the quoted portion, as amended by the Finance Act, 1979, w.e.f. 1-4-1980 and the Finance Act, 1985, w.e.f. 1-4-1985, read as under:
"industrial or agricultural development in India or by a 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, an amount not exceeding forty per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) carried to such reserve account:"

41. Substituted for "before making any deduction under this section" by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1996.

41a. First proviso shall be omitted by the Finance Act, 1999, w.e.f. **1-4-2000**.

42. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

43. For approved financial corporations, *see* Taxmann's Master Guide to Income-tax Act.

43a. Word "further" shall be omitted by the Finance Act, 1999, w.e.f. **1-4-2000**.

44. Inserted by the Finance Act, 1981, w.e.f. 1-4-1982.

45. Substituted for "(excluding the amounts capitalised from reserves)" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

45a. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

[46][*Explanation.*—In this clause,—

(*a*) "financial corporation" shall include a public company and a Government company;

(*b*) [47]"public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*c*) [48]"Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956);]

[49][(*d*) "infrastructure facility" shall have the meaning assigned to it in clause (*23G*) of section 10;]

[50][(*e*) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;]

(*viiia*) [51][* * *]

[52][(*ix*) any expenditure *bona fide* incurred by a company for the purpose of promoting family planning amongst its employees :

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46. Substituted by the Finance Act, 1992, w.r.e.f. 1-4-1987. Prior to substitution, *Explanation* as inserted by the Finance Act, 1970, w.r.e.f. 1-4-1966 and later on omitted by the Finance Act, 1974, w.e.f. 1-4-1975 and again inserted by the Finance Act, 1979, w.e.f. 1-4-1980 and further substituted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1987, read as under :

'*Explanation.*—In this clause,—

(*a*) "financial corporation" shall include a public company;

(*b*) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956).'

47. For definition of "public company", *see* **Appendix One.**

48. For definition of "Government company", *see* footnote 18 on page 1.19 *ante*.

49. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, clause (*d*), as inserted by the Finance Act, 1995, w.e.f. 1-4-1996, read as under :

'(*d*) "infrastructure facility" shall have the meaning assigned to it in section 80-IA;'

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

51. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to omission clause (*viiia*), as inserted by the Finance Act, 1982, w.e.f. 1-4-1983 and later on amended by the Finance Act, 1985, w.e.f. 1-4-1985, read as under:

'(*viiia*) in respect of any special reserve created by a scheduled bank (other than a bank incorporated by or under the laws of a country outside India) which is engaged in banking operations outside India, an amount not exceeding forty per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) carried to such reserve account:

Provided that, having regard to its capital structure, the extent of its banking operations outside India, its need for resources for such operations outside India and other relevant factors, the bank is, for the time being, approved by the Central Government for the purposes of this clause.

Explanation.—For the purposes of this clause, "scheduled bank" has the same meaning as in clause (*ii*) of the *Explanation* to clause (*viia*);'

For approved banks under the omitted clause (*viiia*), *see* Taxmann's Master Guide to Income-tax Act.

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

Provided that where such expenditure or any part thereof is of a capital nature, one-fifth of such expenditure shall be deducted for the previous year in which it was incurred; and the balance thereof shall be deducted in equal instalments for each of the four immediately succeeding previous years :

Provided further that the provisions of sub-section (2) of section 32 and of sub-section (2) of section 72 shall apply in relation to deductions allowable under this clause as they apply in relation to deductions allowable in respect of depreciation :

Provided further that the provisions of clauses (*ii*), (*iii*), (*iv*) and (*v*) of sub-section (2) [53][and sub-section (5)] of section 35, of sub-section (3) of section 41 and of *Explanation 1* to clause (*1*) of section 43 shall, so far as may be, apply in relation to an asset representing expenditure of a capital nature for the purposes of promoting family planning as they apply in relation to an asset representing expenditure of a capital nature on scientific research;]

[54][(*x*) any sum paid by a public financial institution by way of contribution towards any fund specified under clause (*23E*) of section 10.

Explanation.—For the purposes of this clause, "public financial institution" shall have the meaning assigned to it in [55]section 4A of the Companies Act, 1956 (1 of 1956);]

The following clause (xi) shall be inserted after clause (x) of sub-section (1) of section 36 by the Finance Act, 1999, w.e.f. 1-4-2000 :

(xi) *any expenditure incurred by the assessee, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, wholly and exclusively in respect of a non-Y2K compliant computer system, owned by the assessee and used for the purposes of his business or profession, so as to make such computer system Y2K compliant computer system :*

Provided *that no such deduction shall be allowed in respect of such expenditure under any other provisions of this Act :*

Provided further *that no such deduction shall be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the* Explanation *below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.*

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

(a) *"computer system" means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in con-*

53. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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

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

junction with external files, or more of which contain computer programmes, electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control;

(b) *"Y2K compliant computer system" means a computer system capable of correctly processing, providing or receiving data relating to date within and between the twentieth and twenty-first century.*

[56](2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

[57][(*i*) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;]

(*ii*) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(*iii*) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year [58][(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)], but the [59][Assessing] Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(*iv*) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year [60][(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)] and the [61][Assessing] Officer is satisfied that such debt or part became a bad debt in any earlier previous year not

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

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

"(*i*) no such deduction shall be allowed unless such debt or part thereof—

(*a*) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

(*b*) has been written off as irrecoverable in the accounts of the assessee for that previous year;"

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

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

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

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

falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply;

[62][(*v*) where such debt or part of debt relates to advances made by an assessee to which clause (*viia*) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.]

General.

[63]**37.** [64](1) [65]Any expenditure (not being expenditure of the nature described in sections 30 to 36 [66][***] and not being in the nature of capital expenditure

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62. Substituted by the Finance Act, 1997, w.r.e.f. 1-4-1992. Prior to its substitution, clause (*v*), as inserted by the Finance Act, 1985, w.e.f. 1-4-1985, read as under :

"(*v*) where such debt or part of debt relates to advances made by a bank to which clause (*viia*) of sub-section (1) applies, no such deduction shall be allowed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause."

63. *See* rules 9A and 9B for computation of deduction in respect of expenditure on production of feature films/expenditure on acquisition of distribution rights of film.

64. *See* also Letter [F. No. 27(30)-IT/59], dated 6-7-1959, Letter [F.No. 9/54/64-IT(A-I)], dated 2-9-1964 and Letter [F. No. 9/56/66-IT(A-I)], dated 17-1-1967, Letter [F.No. 9/23/67-IT (A-I)], dated 6-7-1967, Circular No. 5-P(XIV-I), dated 28-9-1963, Letter [F. No. 10/67/65-IT(A-I)], dated 26-8-1965, Circular No. 16, dated 18-9-1969, Circular No. 64(XI-2), dated 27-1-1951, Circular No. 117, dated 22-8-1973, Letter [F. No. 10/25/63-IT(A-I)], dated 18-6-1964, Letter [F. No. 204/42/77-IT(A-II)], dated 28-9-1977, Circular No. 1-D(IV-53), dated 20-1-1966, Circular No. 2, dated 8-3-1946, Letter [F. No. 35/5/65-IT(A-I)], dated 1-7-1965, Circular No. 69(XIX-3), dated 27-11-1951, Circular No. 4, dated 19-6-1950, Letter [F. No. 10/80/64-IT(A-I)], dated 26-2-1965, Letter [F. No. 10/92/64-IT(A-I)], dated 13-9-1965, Circular No. 3, dated 26-3-1946, Circular No. 22, dated 23-6-1943, Letter [F. No. 10/16/63-IT(A-I)], dated 14-5-1963, Letter [F. No. 10/8/63-IT(A-I)], dated 14-10-1963, Letter [F. No. 27(24)-IT/59], dated 19-5-1959, Letter [F. No. 7/33/62-IT(A-I)], dated 28-8-1963, Circular No. 2-P(XI-6), dated 23-8-1965, Letter [F. No. 13A/20/68-IT(A-II)], dated 3-10-1968, Letter [F. No. 32/6/62-IT(A-I)], dated 16-1-1963. Extracts from the minutes of the 16th meeting of CDTAC held on 2-2-1972, Instruction No. 943 [F. No. 204/15/76-IT(A-II)], dated 2-4-1976, Circular No. 420, dated 4-6-1985, Circular No. 2(40)/66-EAC, dated 16/17-1-1967, issued by the Ministry of Commerce, Circular No. 42 [C. No. 19(7)-IT/42], dated 22-8-1942, Circular No. 36 [R. Disc. No. 54(13)-IT/43], dated 24-11-1943, Circular No. 48 [C. No. 19(22)-IT/42], dated 16-10-1942, Circular No. 192, dated 10-3-1976, Circular No. 316, dated 30-9-1981, Board's Circular Letter No. 10/22/65 IT(A-I), dated 24-5-1965, Circular No. 651, dated 11-6-1993 and Circular No. 671, dated 27-10-1993.

For details, *see* Taxmann's Master Guide to Income-tax Act.

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

66. "and section 80VV", which was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, omitted by the Finance Act, 1985, w.e.f. 1-4-1986.

or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

[67][*Explanation*.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

(2) [68][* * *]

[69][[70](2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.]

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67. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1962.

68. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Omitted sub-section (2) was substituted for sub-sections (2) and (2A) by the Finance Act, 1992, w.e.f. 1-4-1993. Erstwhile sub-sections (2) and (2A) were amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, the Finance Act, 1965, w.e.f. 1-4-1965, the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967, the Finance Act, 1968, w.e.f. 1-4-1968, the Finance Act, 1970, w.e.f. 1-4-1970, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1983, w.e.f. 1-4-1976/1-4-1984. Prior to its omission, sub-section (2), as substituted by the Finance Act, 1992, w.e.f. 1-4-1993, and later on amended by the Finance Act, 1994, w.r.e.f. 1-4-1993, read as under :

'(2) Notwithstanding anything contained in sub-section (1), any expenditure in the nature of entertainment expenditure incurred by any assessee during any previous year commencing on or after the 1st day of April, 1992 shall be allowed as follows :

(*a*) where the amount of such expenditure does not exceed ten thousand rupees, the whole of such amount;

(*b*) in any other case, ten thousand rupees as increased by a sum equal to fifty per cent of such expenditure in excess of ten thousand rupees.

Explanation.—For the purposes of this sub-section, "entertainment expenditure" includes—

(*i*) the amount of any allowance in the nature of entertainment allowance paid by the assessee to any employee or other person;

(*ii*) the amount of any expenditure in the nature of entertainment expenditure [not being expenditure incurred out of an allowance of the nature referred to in clause (*i*)] incurred for the purposes of the business or profession of the assessee by any employee or other person;

(*iii*) expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or other place of their work.'

69. Inserted by the Taxation Laws (Amendment) Act, 1978, w.e.f. 1-4-1979. Originally, the sub-section was inserted by the Finance Act, 1970, w.e.f. 1-4-1970 which was later on omitted by the Finance Act, 1976, w.e.f. 1-4-1977.

70. *See* Circular No. 203, dated 16-7-1976, Circular No. 200, dated 28-6-1976 and Circular No. 19, dated 13-6-1969. For details, *see* Taxmann's Master Guide to Income-tax Act.

(3) [71][* * *]

(3A) [72][* * *]

(3B) [73][* * *]

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71. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (3), as inserted by the Finance Act, 1964, w.e.f. 1-4-1964, read as under :

"(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed."

72. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3A), as inserted by the Finance Act, 1983, w.e.f. 1-4-1984, stood as under :

'(3A) Notwithstanding anything contained in sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income chargeable under the head "Profits and gains of business or profession".'

Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979 and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

73. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3B), as inserted by the Finance Act, 1983, w.e.f. 1-4-1984, stood as under :

"(3B) The expenditure, referred to in sub-section (3A) is that incurred on—

(*i*) advertisement, publicity and sales promotion; or

(*ii*) running and maintenance of aircraft and motor cars; or

(*iii*) payments made to hotels.

Explanation.—For the purposes of sub-sections (3A) and (3B),—

(*a*) the expenditure specified in clause (*i*) to clause (*iii*) of sub-section (3B) shall be the aggregate amount of expenditure incurred by the assessee as reduced by so much of such expenditure as is not allowed under any other provision of this Act;

(*b*) expenditure on advertisement, publicity and sales promotion shall not include remuneration paid to employees of the assessee engaged in one or more of the said activities;

(*c*) expenditure on running and maintenance of aircraft and motor cars shall include,—

(*i*) expenditure incurred on chartering any aircraft and expenditure on hire charges for engaging cars plied for hire;

(*ii*) conveyance allowance paid to employees and, where the assessee is a company, conveyance allowance paid to its directors also."

Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

(3C) [74][* * *]

(3D) [75][* * *]

(4) [76][* * *]

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74. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3C), as inserted by the Finance Act, 1983, w.e.f. 1-4-1984, stood as under:

"(3C) Nothing contained in sub-section (3A) shall apply in respect of expenditure incurred by an assessee, being a domestic company as defined in clause (2) of section 80B, or a person (other than a company) who is resident in India in respect of expenditure incurred wholly and exclusively on—

(*i*) advertisement, publicity and sales promotion outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;

(*ii*) running and maintenance of motor cars in any branch, office or agency maintained outside India, for the promotion of the sale outside India of such goods, services or facilities."

Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

75. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3D), as inserted by the Finance Act, 1983, w.e.f. 1-4-1984, stood as under :

"(3D) No disallowance under sub-section (3A) shall be made—

(*i*) in the case of an assessee engaged in the business of operation of aircraft, in respect of expenditure incurred on running and maintenance of such aircraft;

(*ii*) in the case of an assessee engaged in the business of running motor cars on hire, in respect of expenditure incurred in running and maintenance of such motor cars."

Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

76. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (4), as inserted by the Finance Act, 1970, w.e.f. 1-4-1970, read as under :

'(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),—

(*i*) no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th day of February, 1970, on the maintenance of any residential accommodation in the nature of a guest-house (such residential accommodation being hereafter in this sub-section referred to as "guest-house");

(*ii*) in relation to the assessment year commencing on the 1st day of April, 1971, or any subsequent assessment year, no allowance shall be made in respect of depreciation of any building used as a guest-house or depreciation of any assets in a guest-house:

Provided that the aggregate of the expenditure referred to in clause (*i*) and the amount of any depreciation referred to in clause (*ii*) shall, for the purposes of this sub-section, be reduced by the amount, if any, received from persons using the guest-house :

Provided further that nothing in this sub-section shall apply in relation to any guest-house maintained as a holiday home if such guest-house—

(*a*) is maintained by an assessee who has throughout the previous year employed not less than one hundred whole-time employees in a business or profession carried on by him; and

(*b*) is intended for the exclusive use of such employees while on leave.

(Contd. on p. 1.216)

(5) [77][* * *]

Building, etc., partly used for business, etc., or not exclusively so used.

[78]**38.** (1) Where a part of any premises is used as dwelling house by the assessee,—

(*a*) the deduction under sub-clause (*i*) of clause (*a*) of section 30, in the case of rent, shall be such amount as the [79][Assessing] Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession;

(*b*) the deduction under clause (*b*) of section 30 shall be such sum as the [79][Assessing] Officer may determine having regard to the part so used.

(Contd. from p. 1.215)

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

(*i*) residential accommodation in the nature of a guest-house shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty-two days during the previous year; and

(*ii*) the expenditure incurred on the maintenance of a guest-house shall, in a case where the residential accommodation has been hired by the assessee, include also the rent paid in respect of such accommodation.'

77. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (5), as inserted by the Finance Act, 1983, w.r.e.f. 1-4-1979, read as under :

"(5) For the removal of doubts, it is hereby declared that any accommodation, by whatever name called, maintained, hired, reserved or otherwise arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person (including any employee or, where the assessee is a company, also any director of, or the holder of any other office in, the company), on tour or visit to the place at which such accommodation is situated, is accommodation in the nature of a guest-house within the meaning of sub-section (4)."

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

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

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, clauses (*i*) and (*ii*) of section 31 and [80][clause (*ii*) of sub-section (1)] of section 32 shall be restricted to a fair proportionate part thereof which the [81][Assessing] Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

Managing agency commission.

[81a]**39.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[82]**Amounts not deductible.**

40. Notwithstanding anything to the contrary in sections 30 to [83][38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(*a*) in the case of any assessee—

[84][[85](*i*) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for

80. Substituted for "clauses (*i*), (*ii*), (*iia*) and (*iii*) of sub-section (1) and sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

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

81a. Prior to its omission, section 39 stood as under :

"39. *Managing agency commission.*—Where a managing agent of a company is liable under an agreement in writing made for adequate consideration to share managing agency commission with a third party or third parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them under the agreement, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration, such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement."

82. *See* also Circular No. 91/58/66-ITJ(19), dated 18-5-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

83. Substituted for "39" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

84. Substituted for the following sub-clause (*i*) by the Finance Act, 1988, w.e.f. 1-4-1989.

"(*i*) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163;"

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

technical services or other sum chargeable under this Act, which is payable outside India, on which tax has not been paid or deducted under Chapter XVII-B:

Provided that where in respect of any such sum, tax has been paid or deducted under Chapter XVII-B in any subsequent year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid or deducted.

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

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

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

[86](*ii*) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains;

[87][[86](*iia*) any sum paid on account of wealth-tax.

Explanation.—For the purposes of this sub-clause, "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession

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

87. Inserted by the Income-tax (Amendment) Act, 1972, with retrospective effect from 1-4-1962 subject to savings prescribed by sections 4 and 5 of that Act which read as under:

'4. *Wealth-tax not deductible in computing the total income for certain assessment years.*—Nothing contained in the Indian Income-tax Act, 1922 (11 of 1922), shall be deemed to authorise, or shall be deemed ever to have authorised, any deduction in the computation of the income of any assessee chargeable under the head "Profits and gains of business, profession or vocation" or "Income from other sources" for the assessment year commencing on the 1st day of April, 1957, or any subsequent assessment year, of any sum paid on account of wealth-tax.

Explanation.—For the purposes of this section, "wealth-tax" shall have the same meaning as is assigned to it in the *Explanation* to sub-clause (*iia*) of clause (*a*) of section 40 of the principal Act.

5. *Saving in certain cases.*—Where, before the 15th day of July, 1972 [being the date on which the Income-tax (Amendment) Ordinance, 1972 (7 of 1972), came into force], the Supreme Court has, on an appeal in respect of the assessment of an assessee for any particular assessment year, held that wealth-tax paid by the assessee is deductible in computing the total income of that year, then, nothing contained in sub-clause (*iia*) of clause (*a*) of section 40, or sub-section (1A) of section 58, of the principal Act, as amended by this Act, or, as the case may be, section 4 of this Act, shall apply to the assessment of such assessee for that particular year.'

are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;]

(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;

(*iv*) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries";

(*v*) [88][* * *]

[89][(*b*) in the case of any firm assessable as such,—

(*i*) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner; or

(*ii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or

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88. Omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. Original clause (*v*) was inserted by the Finance Act, 1968, w.e.f. 1-4-1969 and was later amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

89. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, clause (*b*), as amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, and the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989, read as under :

'(*b*) in the case of any firm, any payment of interest, salary, bonus, commission or remuneration made by the firm to any partner of the firm.

Explanation 1.—Where interest is paid by a firm to any partner of the firm who has also paid interest to the firm, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the firm to the partner exceeds the payment of interest by the partner to the firm.

(Contd. on p. 1.220)

(*iii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or

(*iv*) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of eighteen per cent simple interest per annum; or

[90](*v*) any payment of remuneration to any partner who is a working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of

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(Contd. from p. 1.219)

Explanation 2.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented" respectively),—

(*i*) interest paid by the firm to such individual or by such individual to the firm otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the firm to such individual or by such individual to the firm as partner in a representative capacity and interest paid by the firm to the person so represented or by the person so represented to the firm, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person;'

90. *See* Circular No. 739, dated 25-3-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder :—

(*1*) in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section—

(*a*)	on the first Rs. 1,00,000 of the book-profit or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(*b*)	on the next Rs. 1,00,000 of the book-profit	at the rate of 60 per cent;
(*c*)	on the balance of the book-profit	at the rate of 40 per cent;

(*2*) in the case of any other firm—

(*a*)	on the first Rs. 75,000 of the book-profit, or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(*b*)	on the next Rs. 75,000 of the book-profit	at the rate of 60 per cent;
(*c*)	on the balance of the book-profit	at the rate of 40 per cent:

Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 1993, the terms of the partnership deed may, at any time during the said previous year, provide for such payment.

Explanation 1.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 2.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.

Explanation 3.—For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

Explanation 4.—For the purposes of this clause, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;]

[91][(*ba*) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society 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], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

Explanation 1.—Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.

Explanation 2.—Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity"and "person so represented", respectively),—

(*i*) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest

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

paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.]

(*c*) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Finance Act, 1963, w.e.f. 1-4-1963, Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1965, w.e.f. 1-4-1965, Finance Act, 1968, w.e.f. 1-4-1969, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1984, w.e.f. 1-4-1985 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

(*d*) [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.*]

[92][**Expenses or payments not deductible in certain circumstances.**

[93]**40A.**(1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

[94](2)(*a*) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (*b*) of this sub-section, and the [95][Assessing] Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction;

[96][* * *]

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

93. *See* also Press Note, dated 2-5-1969, issued by Ministry of Finance, Circular No. 34, dated 5-3-1970, Circular No. 33, dated 29-12-1969, Circular No. 250, dated 11-1-1979, Circular No. 522, dated 18-8-1988, Letter [F. No. 142(14)/70-TPL], dated 28-9-1970, Letter [F. No. 1(22)/69-TPL(Pt.)], dated 18-4-1969, Circular No. 220, dated 31-5-1977, Circular No. 169 (para 27), dated 23-6-1975, Letter [F. No. 204/10/71-IT(A-II)], dated 17-4-1971 and Letter BC No. T-II/256-Misc. 75-76, dated 15-11-1975, from the Commissioner of Income-tax, Bombay. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

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

96. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, proviso, as amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, stood as under :

"**Provided** that the provisions of this sub-section shall not apply in the case of an assessee being a company in respect of any expenditure to which sub-clause (*i*) of clause (*c*) of section 40 applies."

(*b*) The persons referred to in clause (*a*) are the following, namely :—

(*i*)	where the assessee is an individual	any relative of the assessee;
(*ii*)	where the assessee is a company, firm, association of persons or Hindu undivided family	any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(*iii*) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(*iv*) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(*v*) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(*vi*) any person who carries on a business or profession,—

(*A*) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(*B*) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,—

(*a*) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(*b*) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

(3) [97]Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette[98], in a sum exceeding [99][[1][twenty] thousand] rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, [2][twenty per cent of such expenditure shall not be allowed as a deduction] :

Provided that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding [3][[4][twenty] thousand] rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, the allowance originally made shall be deemed to have been wrongly made and the [5][Assessing] Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made:

Provided further that no disallowance under this sub-section shall be made where any payment in a sum exceeding [6][[7][twenty] thousand] rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed[8], having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.]

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

98. 31-3-1969 specified *vide* Notification No. SO 623, dated 14-2-1969.

99. Substituted for "two thousand five hundred" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. *See* also Circular No. 522, dated 18-8-1988. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

2. Substituted for "such expenditure shall not be allowed as a deduction" by the Finance Act, 1995, w.e.f. 1-4-1996.

3. Substituted for "two thousand five hundred" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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

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

6. Substituted for "two thousand five hundred" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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

8. *See* rule 6DD for cases and circumstances in which payment in a sum exceeding Rs. 20,000 may be made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft. For an analysis of rule 6DD, *see* **Appendix Two.**

[9][(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by a crossed cheque drawn on a bank or by a crossed bank draft in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.]

[10](5) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-section (5) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.*]

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

10. Prior to its omission, sub-section (5), as amended by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985, Finance Act, 1984, w.e.f. 1-4-1985 and Finance Act, 1985, w.e.f. 1-4-1985, stood as under :

'(5) (*a*) Where the assessee—

(*i*) incurs any expenditure which results directly or indirectly in the payment of any salary to an employee or a former employee, or

(*ii*) incurs any expenditure which results directly or indirectly in the provision of any perquisite (whether convertible into money or not) to an employee or incurs directly or indirectly any expenditure or is entitled to any allowance in respect of any assets of the assessee used by an employee either wholly or partly for his own purposes or benefit,

then, subject to the provisions of clause (*b*), so much of such expenditure or allowance as is in excess of the limit specified in respect thereof in clause (*c*) shall not be allowed as a deduction:

Provided that where the assessee is a company, so much of the aggregate of—

(*a*) the expenditure and allowance referred to in sub-clauses (*i*) and (*ii*) of this clause; and

(*b*) the expenditure and allowance referred to in sub-clauses (*i*) and (*ii*) of clause (*c*) of section 40,

in respect of an employee or a former employee, being a director or a person who has a substantial interest in the company or a relative of the director or of such person, as is in excess of the sum of one hundred and two thousand rupees, shall in no case be allowed as a deduction:

Provided further that in computing the expenditure referred to in sub-clause (*i*) or the expenditure or allowance referred to in sub-clause (*ii*) of this clause or the aggregate referred to in the foregoing proviso, the following shall not be taken into account, namely :—

(*i*) the value of any travel concession or assistance referred to in clause (*5*) of section 10;

(*ii*) passage moneys or the value of any free or concessional passage referred to in sub-clause (*i*) of clause (*6*) of section 10;

(*iii*) any payment referred to in clause (*iv*) or clause (*v*) of sub-section (1) of section 36;

(*iv*) any expenditure referred to in clause (*ix*) of sub-section (1) of section 36.

(*b*) Nothing in clause (*a*) shall apply to any expenditure or allowance in relation to—

(*i*) any employee in respect of any period of his employment outside India;

(Contd. on p. 1.227)

(Contd. from p. 1.226)

(*ii*) any employee being an individual referred to in sub-clause (*vii*) or sub-clause (*viia*) of clause (*6*) of section 10 in respect of any period during which he is entitled to the exemption under sub-clause (*vii*) or, as the case may be, sub-clause (*viia*) aforesaid;

(*iii*) any employee whose income chargeable under the head "Salaries" is seven thousand and five hundred rupees or less.

(*c*) The limits referred to in clause (*a*) are the following, namely :—

(*i*) in respect of the expenditure referred to in sub-clause (*i*) of clause (*a*), in the case of an employee, an amount calculated at the rate of seven thousand five hundred rupees for each month or part thereof comprised in the period of his employment in India during the previous year, and in the case of a former employee, being an individual who ceases or ceased to be the employee of the assessee during the previous year or any earlier previous year, ninety thousand rupees:

Provided that where the expenditure is incurred on payment of any salary to an employee or a former employee engaged in scientific research during any one or more of the three years immediately preceding the commencement of the business and such expenditure is deemed under the *Explanation* to clause (*i*) of sub-section (1) of section 35 to have been laid out or expended in the previous year in which the business is commenced, the limit referred to in this sub-clause shall, in relation to the previous year in which the business is commenced, be an amount calculated at the rate of five thousand rupees for each month or part thereof comprised in the period of his employment in India during the previous year in which such business is commenced and in the period of his employment in India during which he was engaged in scientific research during the three years immediately preceding that previous year :

Provided further that in relation to any month or part thereof comprised in any such previous year as is relevant to the assessment year commencing on the 1st day of April, 1985, or any subsequent assessment year, the reference to "five thousand rupees" in the preceding proviso shall be construed as a reference to "seven thousand five hundred rupees";

(*ii*) in respect of the aggregate of the expenditure and the allowance referred to in sub-clause (*ii*) of clause (*a*), one-fifth of the amount of the salary payable to the employee or an amount calculated at the rate of one thousand rupees for each month or part thereof comprised in the period of employment in India of the employee during the previous year, whichever is less.

Explanation 1.—The provisions of this sub-section shall apply notwithstanding that any amount not to be allowed under this sub-section is included in the total income of the employee or, as the case may be, the former employee.

Explanation 2.—In this sub-section,—

(*a*) "salary" has the meaning assigned to it in clause (*1*) read with clause (*3*) of section 17 subject to the following modifications, namely :—

(*1*) in the said clause (*1*), the word "perquisites" occurring in sub-clause (*iv*) and the whole of sub-clause (*vii*) shall be omitted;

(*2*) in the said clause (*3*), the references to "assessee" shall be construed as references to "employee or former employee" and the references to "his employer or former employer" and "an employer or a former employer" shall be construed as references to "the assessee";

(*b*) "perquisite" means—

(*i*) rent-free accommodation provided to the employee by the assessee;

(*ii*) any concession in the matter of rent respecting any accommodation provided to the employee by the assessee;

(Contd on p. 1.228)

[11](6) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-section (6) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.*]

[12][[13](7)(*a*) Subject to the provisions of clause (*b*), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(*b*) Nothing in clause (*a*) shall apply in relation to—

(*i*) any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year;

(*ii*) any provision made by the assessee for the previous year relevant to any assessment year commencing on or after the 1st day of April, 1973, but before the 1st day of April, 1976, to the extent the amount of such provision does not exceed the admissible amount, if the following conditions are fulfilled, namely :—

(*1*) the provision is made in accordance with an actuarial valuation of the ascertainable liability of the assessee for payment of gratuity to his employees on their retirement or on termination of their employment for any reason;

(*2*) the assessee creates an approved gratuity fund for the exclusive benefit of his employees under an irrevocable trust, the application for the approval of the fund having been made before the 1st day of January, 1976; and

(*3*) a sum equal to at least fifty per cent of the admissible amount, or where any amount has been utilised out of such provision for the

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(Contd. from p. 1.227)

(*iii*) any benefit or amenity granted or provided free of cost or at concessional rate to the employee by the assessee;

(*iv*) payment by the assessee of any sum in respect of any obligation which, but for such payment, would have been payable by the employee; and

(*v*) payment by the assessee of any sum, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the employee or to effect a contract for an annuity;'

11. Prior to its omission, sub-section (6), as amended by the Finance Act, 1984, w.e.f. 1-4-1985, stood as under :

"(6) Where the assessee incurs any expenditure by way of fees for services rendered by a person who at any time during the twenty-four months immediately preceding the previous year was an employee of the assessee,—

(*a*) such expenditure by way of fees, or

(*b*) where the assessee has also incurred in relation to such person any expenditure by way of salary referred to in sub-clause (*i*) of clause (*a*) of sub-section (5), the aggregate of such expenditure by way of fees and by way of salary,

shall not be allowed as a deduction to the extent such expenditure by way of fees or, as the case may be, the aggregate of such expenditure by way of fees and by way of salary exceeds ninety thousand rupees."

12. Inserted by the Finance Act, 1975, w.r.e.f. 1-4-1973.

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

purpose of payment of any gratuity before the creation of the approved gratuity fund, a sum equal to at least fifty per cent of the admissible amount as reduced by the amount so utilised, is paid by the assessee by way of contribution to the approved gratuity fund before the 1st day of April, 1976, and the balance of the admissible amount or, as the case may be, the balance of the admissible amount as reduced by the amount so utilised, is paid by the assessee by way of such contribution before the 1st day of April, 1977.

Explanation 1.—For the purposes of sub-clause (*ii*) of clause (*b*) of this sub-section, "admissible amount" means the amount of the provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason, to the extent such amount does not exceed an amount calculated at the rate of eight and one-third per cent of the salary [as defined in clause (*h*) of rule 2 of Part A of the Fourth Schedule] of each employee entitled to the payment of such gratuity for each year of his service in respect of which such provision is made.

Explanation 2.—For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.]

The following sub-section (7) shall be substituted for the existing sub-section (7) of section 40A by the Finance Act, 1999, w.e.f. 1-4-2000 :

*(7) (*a*) Subject to the provisions of clause (*b*), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.*

*(*b*) Nothing in clause (*a*) shall apply in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.*

Explanation.—*For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.*

(8) [14][* * *]

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14. Sub-section (8) omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Sub-section (8), as inserted by the Finance Act, 1975, w.e.f. 1-4-1976, stood as under :

'(8) Where the assessee, being a company (other than a banking company or a financial company), incurs any expenditure by way of interest in respect of any deposit received by it, fifteen per cent of such expenditure shall not be allowed as a deduction.

Explanation.—In this sub-section,—

(*a*) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;

(*b*) "deposit" means any deposit of money with, and includes any money borrowed by, a company, but does not include any amount received by the company—

(*i*) from the Central Government or any State Government or any local authority, or from any other source where the repayment of the amount is guaranteed by the Central Government or a State Government;

(*ii*) from the Government of a foreign State, or from a citizen of a foreign State, or from any institution, association or body (whether incorporated or not) established outside India;

(*iii*) as a loan from a banking company or from a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

(*iv*) as a loan from any institution or body specified in the list in the Tenth Schedule or such other institution or body as the Central Government may, having regard to the nature and objects of the institution or body, by notification in the Official Gazette, specify in this behalf;

(*v*) from any other company;

(*vi*) from an employee of the company by way of security deposit;

(*vii*) by way of security or as an advance from any purchasing agent, selling agent or other agent in the course of, or for the purpose of, the business of the company or as advance against orders for the supply of goods or for the rendering of any service;

(*viii*) by way of subscription to any share, stock, bond or debenture (such bond or debenture being secured by a charge or a lien on the assets of the company) pending the allotment of the said share, stock, bond or debenture, or by way of advance payment of any moneys uncalled and unpaid upon any shares in the company, if such moneys are not repayable in accordance with the articles of association of the company;

(*ix*) as a loan from any person where the loan is secured by the creation of a mortgage, charge or pledge of any assets of the company (such loan being hereafter in this sub-clause referred to as the relevant loan) and the amount of the relevant loan, together with the amount of any other prior debt or loan secured by the creation of a mortgage, charge or pledge of such assets, is not more than seventy-five per cent of the price that such assets would ordinarily fetch on sale in the open market on the date of creation of the mortgage, charge or pledge for the relevant loan;

(*c*) "financial company" means—

(*i*) a hire-purchase finance company, that is to say, a company which carries on, as its principal business, hire-purchase transactions or the financing of such transactions; or

(*ii*) an investment company, that is to say, a company which carries on, as its principal business, the acquisition of shares, stock, bonds, debentures, debenture stock, or securities issued by the Government or a local authority, or other marketable securities of a like nature; or

(Contd. on p. 1.231)

[15][(9) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (*iv*) or clause (*v*) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.

(10) Notwithstanding anything contained in sub-section (9), where the [16][Assessing] Officer is satisfied that the fund, trust, company, association of persons, body of individuals, society or other institution referred to in that sub-section has, before the 1st day of March, 1984, *bona fide* laid out or expended any expenditure (not being in the nature of capital expenditure) wholly and exclusively for the welfare of the employees of the assessee referred to in sub-section (9) out of the sum referred to in that sub-section, the amount of such expenditure shall, in case no deduction has been allowed to the assessee in respect of such sum and subject to the other provisions of this Act, be deducted in computing the income referred to in section 28 of the assessee of the previous year in which such expenditure is so laid out or expended, as if such expenditure had been laid out or expended by the assessee.]

[17][(11) Where the assessee has, before the 1st day of March, 1984, paid any sum to any fund, trust, company, association of persons, body of individuals, society or other institution referred to in sub-section (9), then, notwithstanding anything contained in any other law or in any instrument, he shall be entitled—

(*i*) to claim that so much of the amount paid by him as has not been laid out or expended by such fund, trust, company, association of persons, body of individuals, society or other institution (such amount being hereinafter referred to as the unutilised amount) be repaid to him, and where any claim is so made, the unutilised amount shall be repaid, as soon as may be, to him;

(Contd. from p. 1.230)

(*iii*) a housing finance company, that is to say, a company which carries on, as its principal business, the business of financing of acquisition or construction of houses, including acquisition or development of land in connection therewith;

(*iv*) a loan company, that is to say, a company [not being a company referred to in sub-clauses (*i*) to (*iii*)] which carries on, as its principal business, the business of providing finance, whether by making loans or advances or otherwise;

(*v*) a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A of the Companies Act, 1956 (1 of 1956), to be a *Nidhi* or Mutual Benefit Society;

(*vi*) a miscellaneous finance company, that is to say, a company which carries on exclusively, or almost exclusively, two or more classes of business referred to in the preceding sub-clauses.'

15. Inserted by the Finance Act, 1984, with retrospective effect from 1-4-1980.

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

17. Inserted by the Finance Act, 1984, w.r.e.f. 1-4-1980.

(*ii*) to claim that any asset, being land, building, machinery, plant or furniture acquired or constructed by the fund, trust, company, association of persons, body of individuals, society or other institution out of the sum paid by the assessee, be transferred to him, and where any claim is so made, such asset shall be transferred, as soon as may be, to him.]

(12) [18][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Profits chargeable to tax.

41. [19][[20](1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(*a*) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(*b*) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (*a*) by

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18. Prior to omission sub-section (12), as inserted by the Finance Act, 1985, w.e.f. 1-4-1986, read as under:

"(12) No deduction shall be allowed in excess of ten thousand rupees for any assessment year in respect of any expenditure incurred by the assessee by way of fees or other remuneration paid to any person (other than an employee of the assessee),—

(*a*) for services (not being services by way of preparation of return of income) in connection with any proceeding under this Act before any income-tax authority or the Commission constituted under section 245B or a competent authority within the meaning of clause (*b*) of section 269A or the Appellate Tribunal or any court;

(*b*) for services in connection with any other proceeding before any court, being a proceeding relating to tax, penalty, interest or any other matter under this Act; and

(*c*) for any advice in connection with tax, penalty, interest or any other matter under this Act."

19. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-section (1) read as under:

"(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not."

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

way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

[21][*Explanation 1*.—For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (*a*) or the successor in business under clause (*b*) of that sub-section by way of writing off such liability in his accounts.]

[22][*Explanation 2*].—For the purposes of this sub-section, "successor in business" means,—

(*i*) where there has been an amalgamation of a company with another company, the amalgamated company;

(*ii*) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;

(*iii*) where a firm carrying on a business or profession is succeeded by another firm, the other firm;]

The following clause (iv) shall be inserted after clause (iii) in Explanation 2 to sub-section (1) of section 41 by the Finance Act, 1999, w.e.f. 1-4-2000 :

*(*iv*) where there has been a demerger, the resulting company.*

[23][(2) Where any building, machinery, plant or furniture,—

(*a*) which is owned by the assessee;

(*b*) in respect of which depreciation is claimed under clause (*i*) of sub-section (1) of section 32; and

(*c*) which was or has been used for the purposes of business,

is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or

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

22. *Explanation* renumbered as *Explanation 2, ibid.*

23. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998. Earlier original sub-section (2) was amended by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and later on omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

furniture was being used is no longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.]

(2A) [24][***]

(3) Where an asset representing expenditure of a capital nature on scientific research within the meaning of clause (*iv*) of sub-section (1), [25][or clause (*c*) of sub-section (2B),] of section 35, read with clause (*4*) of section 43, is sold, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under clause (*i*) [26][or, as the case may be, the amount of the deduction under clause (*ia*)] of sub-section (2), [27][or clause (*c*) of sub-section (2B),] of section 35 exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

Explanation.—Where the moneys payable in respect of any asset referred to in this sub-section become due in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

[28](4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (*vii*) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

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24. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (2A), as inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, stood as under :

'(2A) Where any structure or work in or in connection with a building, being the structure or work referred to in sub-section (1A) of section 32, is sold, discarded, demolished, destroyed or is surrendered as a result of the determination of the lease or other right of occupancy in respect of the building and the moneys payable in respect of such structure or work together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the actual cost of the structure or work and its written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the moneys payable for the structure or work became due.

Explanation 1.—Where the moneys payable in respect of the structure or work referred to in this sub-section become due in a previous year in which the business or profession for the purpose of which the structure or work was constructed or done is no longer in existence, the provisions of this sub-section shall apply as if the business or profession were in existence in that previous year.

Explanation 2.—For the purposes of this sub-section, the expression "moneys payable" and the expression "sold" shall have the same meanings as in sub-section (1A) of section 32.'

25. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

26. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

27. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

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

[29][*Explanation.*—For the purposes of sub-section (3),—

(*1*) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold,

so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (*1*) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(*2*) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company.]

[30][(4A) Where a deduction has been allowed in respect of any special reserve created and maintained under clause (*viii*) of sub-section (1) of section 36, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to income-tax as the income of the previous year in which such amount is withdrawn.

Explanation.—Where any amount is withdrawn from the special reserve in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.]

(5) Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1), [31][***] sub-section (3) [32][, sub-section (4) or sub-section (4A)] in respect of that business or profession, any loss, not being a loss sustained in speculation business [33][***], which arose in that business or profession during the previous year in which it

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29. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution it stood as under:

'*Explanation.*—The expression "moneys payable" and the expression "sold" in sub-sections (2) and (3) shall have the same meanings as in sub-section (1) of section 32.'

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

31. "sub-section (2), *sub-section (2A),"* omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Italicised words were inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

32. Substituted for "or sub-section (4)" by the Finance Act, 1997, w.e.f. 1-4-1998.

33. 'or under the head "Capital gains" ' omitted by the Finance Act, 1987, w.e.f. 1-4-1988.

ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid.

[34][(6) References in sub-section (3) to any other provision of this Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987 shall, notwithstanding such amendment or omission, be construed, for the purposes of that sub-section, as if such amendment or omission had not been made.]

Special provision for deductions in the case of business for prospecting, etc., for mineral oil.

42. [35][(*1*)] For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation [36][of the Central Government or any person authorised by it in such business] (which agreement has been laid on the Table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(*a*) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee ;

(*b*) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32 : [37][***]

[38][**Provided** that in relation to any agreement entered into after the 31st day of March, 1981, this clause shall have effect subject to the modification that the words and figures "except assets on which allowance for depreciation is admissible under section 32" had been omitted; and]

(*c*) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

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

35. Section 42 renumbered as sub-section (1) thereof by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

36. Substituted for "in such business of the Central Government" by the Finance Act, 1981, w.e.f. 1-4-1981.

37. "and" omitted by the Finance Act, 1981, w.e.f. 1-4-1981.

38. Inserted, *ibid*.

[39][*(2) Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest in such business is transferred in accordance with the agreement referred to in sub-section (1), subject to the provisions of the said agreement and where the proceeds of the transfer (so far as they consist of capital sums)—*

(a) *are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of transfer, shall be allowed in respect of the previous year in which such business or interest, as the case may be, is transferred;*

(b) *exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred in connection with the business or to obtain interest therein and the amount of such expenditure remaining unallowed, shall be chargeable to income-tax as profits and gains of the business in the previous year in which the business or interest therein, whether wholly or partly, had been transferred :*

Provided *that in a case where the provisions of this clause do not apply, the deduction to be allowed for expenditure incurred remaining unallowed shall be arrived at by substracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed.*

Explanation.—*Where the business or interest in such business is transferred in a previous year in which such business carried on by the assessee is no longer in existence, the provisions of this clause shall apply as if the business is in existence in that previous year;*

(c) *are not less than the amount of the expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed in respect of the previous year in which the business or interest in such business is transferred or in respect of any subsequent year or years :*

Provided *that in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the business to the amalgamated company (being an Indian company), the provisions of this sub-section—*

(i) *shall not apply in the case of the amalgamating company; and*

(ii) *shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the business or interest in the business.*]

The following proviso shall be substituted for the existing proviso to sub-section (2) of section 42 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Provided *that where in a scheme of amalgamation or demerger, the amalgamating or the demerged company sells or otherwise transfers the business to the amalgamated or the resulting company (being an Indian company), the provisions of this sub-section—*

(i) shall not apply in the case of the amalgamating or the demerged company; and

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39. Inserted by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.**

(ii) *shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalagamating or the demerged company if the latter had not transferred the business or interest in the business.*

[40][*Explanation.*—For the purposes of this section, "mineral oil" includes petroleum and natural gas.]

Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires—

[41](*1*) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

[42][**Provided** that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, [43][but before the 1st day of March, 1975,] and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.]

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under [44][clause (*ii*) of sub-section (1)] of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (*iv*) of sub-section (1) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

[45][*Explanation 2.*—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the actual cost to the previous owner, as reduced by—

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

41. *See* also Circular No. 190, dated 1-3-1976. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

42. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Original proviso was inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

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

44. Substituted for "clause (*i*), clause (*ii*) or clause (*iii*) of sub-section (1) *or sub-section (1A)"* by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Italicised words were inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

45. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution, *Explanation 2* stood as under :
"*Explanation 2.*—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less."

(*a*) the amount of depreciation actually allowed under this Act and the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(*b*) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets.]

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the [46][Assessing] Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the [46][Assessing] Officer may, with the previous approval of the [47][Joint Commissioner], determine having regard to all the circumstances of the case.

[48][*Explanation 4*.—Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be—

(*i*) the actual cost to him when he first acquired the asset as reduced by—

(*a*) the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

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

47. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

48. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution, *Explanation 4* as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, stood as under :

"*Explanation 4*.—Where assets which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, are re-acquired by him, the actual cost to the assessee shall be the actual cost to him when he first acquired the assets less the depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), diminished by any loss deducted, or as the case may be, increased by any profit assessed, under the provisions of clause (*iii*) of sub-section (1) or clause (*ii*) of sub-section (1A) of section 32 or sub-section (2) or sub-section (2A) of section 41 of this Act, or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), or the actual price for which the asset is re-acquired by him, whichever is the less."

(*b*) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets; or

(*ii*) the actual price for which the asset is re-acquired by him,

whichever is less.]

[49][*Explanation 4A*.—Where before the date of acquisition by the assessee (hereinafter referred to as the first mentioned person), the assets were at any time used by any other person (hereinafter referred to as the second mentioned person) for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of the second mentioned person and such person acquires on lease, hire or otherwise assets from the first mentioned person, then, notwithstanding anything contained in *Explanation 3,* the actual cost of the transferred assets, in the case of first mentioned person, shall be the same as the written down value of the said assets at the time of transfer thereof by the second mentioned person.]

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

[50][*Explanation 6*.—When any capital asset is transferred by a holding company to its subsidiary company or by a subsidiary company to its holding company, then, if the conditions of clause (*iv*) or, as the case may be, of clause (*v*) of section 47 are satisfied, the actual cost of the transferred capital asset to the transferee-company shall be taken to be the same as it would have been if the transferor-company had continued to hold the capital asset for the purposes of its business.]

[51][*Explanation 7*.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.]

The following Explanation 7A shall be inserted after Explanation 7 to clause (1) of section 43 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Explanation 7A.—*Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting*

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

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

51. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business :

Provided *that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company.*

[52][*Explanation 8.*—For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.]

[53][*Explanation 9.*—For the removal of doubts, it is hereby declared that where an asset is or has been acquired on or after the 1st day of March, 1994 by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944.]

[54][Explanation 10.—*Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee :*

Provided *that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee;*]

The following Explanation 11 shall be inserted after Explanation 10 to clause (1) of section 43 of the Finance Act, 1999, w.e.f. 1-4-2000 :

Explanation 11.—*Where an asset which was acquired outside India by an assessee, being a non-resident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee;*

52. Inserted by the Finance Act, 1986, w.r.e.f. 1-4-1974.
53. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1994.
54. Inserted, *ibid.*, w.e.f. **1-4-1999.**

(*2*) "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "Profits and gains of business or profession";

[55](*3*) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession [56][but does not include tea bushes or livestock];

(*4*) [57][(*i*) "scientific research" means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries;]

(*ii*) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;

[58](*5*) [59]"speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

(*a*) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(*b*) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(*c*) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member;

shall not be deemed to be a speculative transaction;

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

56. Inserted by the Finance Act, 1995, w.r.e.f. 1-4-1962.

57. Substituted by the Finance Act, 1968, w.e.f. 1-4-1969.

58. *See* also Circular No. 23D(XXXIX-4), dated 12-9-1960. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

[60](*6*) "written down value" means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee;

(*b*) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:

[61][**Provided** that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (*ii*) of sub-section (1) of section 32, "depreciation actually allowed" shall not include depreciation allowed under sub-clauses (*a*), (*b*) and (*c*) of clause (*vi*) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (*vi*);]

[62][(*c*) in the case of any block of assets,—

(*i*) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,—

(*A*) by the increase by the actual cost of any asset falling within that block, acquired during the previous year; and

(*B*) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

The following sub-item (C) shall be inserted after sub-item (B) of item (i) of sub-clause (c) of clause (6) of section 43 by the Finance Act, 1999, w.e.f. 1-4-2000 :

(C) *in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—*

(a) *by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of any previous year relevant to*

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

61. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.

62. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

the assessment year commencing before the 1st day of April, 1988; and

(b) *by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets,*

so, however, that the amount of such decrease does not exceed the written down value;

(*ii*) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (*i*).]

Explanation 1.—When in a case of succession in business or profession, an assessment is made on the successor under sub-section (2) of section 170 the written down value of [63][any asset or any block of assets] shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to.

[64][*Explanation 2*.—Where in any previous year, any block of assets is transferred,—

(*a*) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (*iv*) or, as the case may be, of clause (*v*) of section 47 are satisfied; or

(*b*) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,

then, notwithstanding anything contained in clause (*1*), the actual cost of the block of assets in the case of the transferee-company or the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.]

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63. Substituted for "any asset" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

64. Substituted for *Explanation 2* and *Explanation 2A* by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to their substitution, *Explanation 2* was substituted by the Finance Act, 1965, w.e.f. 1-4-1965 and *Explanation 2A* was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

The following Explanation 2A and Explanation 2B shall be inserted after Explanation 2 to clause (6) of section 43 by the Finance Act, 1999, w.e.f. 1-4-2000 :

Explanation 2A.—*Where in any previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (*1*), the written down value of the block of assets of the demerged company for the immediately preceding previous year shall be reduced by the book value of the assets transferred to the resulting company pursuant to the demerger.*

Explanation 2B.—*Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (*1*), the written down value of the block of assets in the case of the resulting company shall be the value of the assets as appearing in the books of account of the demerged company immediately before the demerger :*

Provided *that if the value of the assets as appearing in the books of account of the demerged company immediately before the demerger exceeds the written down value of such assets in the hands of the demerged company, the amount representing such excess shall be reduced from the written down value of the assets.*

Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of section 32 shall be deemed to be depreciation "actually allowed".

[65][*Explanation 4*.—For the purposes of this clause, the expressions "moneys payable" and "sold" shall have the same meanings as in the *Explanation* below sub-section (4) of section 41.]

[66][**Special provisions consequential to changes in rate of exchange of currency.**

[67]**43A.** (1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted

65. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

66. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

67. *See* also Letter, dated 4-1-1967, issued by Ministry of Finance to FICCI. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

from, the actual cost of the asset as defined in clause (*1*) of section 43 or the amount of expenditure of a capital nature referred to [68][in clause (*iv*) of sub-section (1) of section 35 or in section 35A] or in clause (*ix*) of sub-section (1) of section 36, or, in the case of a capital asset (not being a capital asset referred to in section 50), the cost of acquisition thereof for the purposes of section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid.

Explanation 1.—In this sub-section, unless the context otherwise requires,—

(*a*) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(*b*) [69]"foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1947 (7 of 1947).[70]

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this sub-section.

Explanation 3.—Where the assessee has entered into a contract with an [71]authorised dealer as defined in section 2 of the Foreign Exchange Regulation Act, 1947 (7 of 1947),[72] for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this sub-section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.

(2) The provisions of sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of the deduction on account of development rebate under section 33.]

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68. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

69. For definition of "foreign currency", *see* footnote 35 on p. 1.62 *ante*. Section 2(*k*) of the Foreign Exchange Regulation Act, 1973 defines "Indian currency" as under:

'(*k*) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one-rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (20 of 1934);'

70. Now Foreign Exchange Regulation Act, 1973 (46 of 1973).

71. Section 2(*b*) of the Foreign Exchange Regulation Act, 1973, defines "authorised dealer" as under:

'(*b*) "authorised dealer" means a person for the time being authorised under section 6 to deal in foreign exchange;'

72. Now Foreign Exchange Regulation Act, 1973 (46 of 1973).

[73][**Certain deductions to be only on actual payment.**

[74]**43B.** [75]Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

[76][(*a*) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or]

(*b*) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, [77][or]

[78][(*c*) any sum referred to in clause (*ii*) of sub-section (1) of section 36,] [79][or]

[79][(*d*) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution [80][or a state financial corporation or a state industrial investment corporation], in accordance with the terms and conditions of the agreement governing such loan or borrowing [81][, or]

[81][(*e*) any sum payable by the assessee as interest on any term loan from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan,]

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

[82][**Provided** that nothing contained in this section shall apply in relation to any sum referred to in clause (*a*) [83][or clause (*c*)] [84][or clause (*d*)] [85][or clause (*e*)] which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return:

[86][**Provided further** that no deduction shall, in respect of any sum referred to in clause (*b*), be allowed unless such sum has actually been paid in cash or by issue

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73. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

74. *See* also Circular No. 496, dated 25-9-1987 and Circular No. 674, dated 29-12-1993. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

76. Substituted for the following clause (*a*) by the Finance Act, 1988, w.e.f. 1-4-1989:
"(*a*) any sum payable by the assessee by way of tax or duty under any law for the time being in force, or"

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

78. Inserted, *ibid*.

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

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

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

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

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

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

85. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1997.

86. Substituted for the following second proviso by the Finance Act, 1989, w.e.f. 1-4-1989:
"**Provided further** that no deduction shall, in respect of any sum referred to in clause (*b*), be allowed unless such sum has actually been paid during the previous year on or before the due date as defined in the *Explanation* below clause (*va*) of sub-section (1) of section 36."

of a cheque or draft or by any other mode on or before the due date as defined in the *Explanation* below clause (*va*) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realised within fifteen days from the due date.]]

Explanation [87][*1*].—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*a*) or clause (*b*) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[88][*Explanation 2.*—For the purposes of clause (*a*), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.]

[89][[90][*Explanation 3*].—For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause (*c*) [91][or clause (*d*)] of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[92][*Explanation 3A.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*e*) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1996, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[93][*Explanation 4.*—For the purposes of this section,—

(*a*) "public financial institutions" shall have the meaning assigned to it in section 4A[94] of the Companies Act, 1956 (1 of 1956);

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

88. Inserted by the Finance Act, 1989, w.r.e.f. 1-4-1984.

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

90. Renumbered by the Finance Act, 1989, w.r.e.f. 1-4-1984.

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

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

93. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991. Prior to substitution *Explanation 4*, as inserted by the Finance Act, 1988, w.e.f. 1-4-1989 and amended by the Finance Act, 1989, w.r.e.f. 1-4-1984, read as under :

'*Explanation 4.*—For the purposes of this section the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956).'

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

[95][(*aa*) "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36;]

The following clause (aa) shall be substituted for the existing clause (aa) in Explanation 4 to section 43B of the Finance Act, 1999, w.e.f. 1-4-2000 :

*(*aa*) "scheduled bank" shall have the meaning assigned to it in the* Explanation *to clause (*iii*) of sub-section (5) of section 11;*

(*b*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*c*) "State industrial investment corporation" means a [96]Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and approved by the Central Government under clause (*viii*) of sub-section (1) of section 36.]

[97][**Special provision for computation of cost of acquisition of certain assets.**

43C. (1) Where an asset [not being an asset referred to in sub-section (2) of section 45] which becomes the property of an amalgamated company under a scheme of amalgamation, is sold after the 29th day of February, 1988, by the amalgamated company as stock-in-trade of the business carried on by it, the cost of acquisition of the said asset to the amalgamated company in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the amalgamating company, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer by the amalgamating company.

(2) Where an asset [not being an asset referred to in sub-section (2) of section 45] which becomes the property of the assessee on the total or partial partition of a Hindu undivided family or under a gift or will or an irrevocable trust, is sold after the 29th day of February, 1988, by the assessee as stock-in-trade of the business carried on by him, the cost of acquisition of the said asset to the assessee in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the transferor or the donor, as the case may be, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer (by way of effecting the partition, acceptance of the gift, obtaining probate in respect of the will or the creation of the trust), including the payment of gift-tax, if any, incurred by the transferor or the donor, as the case may be.]

[98][**Special provision in case of income of public financial institutions, etc.**[99]

43D. Notwithstanding anything to the contrary contained in any other provision of this Act, in the case of a public financial institution or a scheduled bank or a State financial corporation or a State industrial investment corporation, the

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

96. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.

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

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

99. *See* also Circular No. 698, dated 26-12-1994.

income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed[1] having regard to the guidelines issued by the Reserve Bank of India in relation to such debts, shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or the State financial corporation or the State industrial investment corporation to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation, whichever is earlier.

Explanation.—For the purposes of this section,—

(*a*) "public financial institution" shall have the meaning assigned to it in section 4A[2] of the Companies Act, 1956 (1 of 1956);

(*b*) "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36;

(*c*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*d*) "State industrial investment corporation" means a [3]Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and approved by the Central Government under clause (*viii*) of sub-section (1) of section 36.]

The following section 43D shall be substituted for the existing section 43D by the Finance Act, 1999, w.e.f. 1-4-2000 :

Special provision in case of income of public financial institutions, public companies, etc.

43D. *Notwithstanding anything to the contrary contained in any other provision of this Act,—*

*(*a*) in the case of a public financial institution or a scheduled bank or a State financial corporation or a State industrial investment corporation, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts;*

*(*b*) in the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank in relation to such debts,*

shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or the State financial corporation or the State industrial investment corporation or the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.

1. *See* rule 6EA for specified categories of bad or doubtful debts.
2. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix One.**
3. For definition of "Government company", *see* footnote 18 on p. 1.19 *ante*.

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

(a) *"National Housing Bank" means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987);*

(b) *"public company" means a company,—*

(i) *which is a public company within the meaning of section 3 of the Companies Act, 1956 (1 of 1956);*

(ii) *whose main object is carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes; and*

(iii) *which is registered in accordance with the Housing Finance Companies (NHB) Directions, 1989 given under section 30 and section 31 of the National Housing Bank Act, 1987 (53 of 1987);*

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

(d) *"scheduled bank" shall have the meaning assigned to it in clause (ii) of the* Explanation *to clause (viia) of sub-section (1) of section 36;*

(e) *"State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);*

(f) *"State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects.*

Insurance business.

[4]**44.** Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to [5][43B], the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

[6][**Special provision for deduction in the case of trade, professional or similar association.**

[7]**44A.** (1) Notwithstanding anything to the contrary contained in this Act, where the amount received during a previous year by any trade, professional or similar association [8][(other than an association or institution referred to in clause (*23A*) of section 10)] from its members, whether by way of subscription

4. *See* also Letter [F. No. 14/3/7-IT(A-I)], dated 7-8-1967, Circular No. 38, dated 3-10-1956 and Circular No. 22 [R. Disc. 51 (14)-IT-47], dated 23-9-1947. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

6. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

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

8. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1964.

or otherwise (not being remuneration received for rendering any specific services to such members) falls short of the expenditure incurred by such association during that previous year (not being expenditure deductible in computing the income under any other provision of this Act and not being in the nature of capital expenditure) solely for the purposes of protection or advancement of the common interests of its members, the amount so fallen short (hereinafter referred to as deficiency) shall, subject to the provisions of this section, be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under the head "Profits and gains of business or profession" and if there is no income assessable under that head or the deficiency allowable exceeds such income, the whole or the balance of the deficiency, as the case may be, shall be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under any other head.

(2) In computing the income of the association for the relevant assessment year under sub-section (1), effect shall first be given to any other provision of this Act under which any allowance or loss in respect of any earlier assessment year is carried forward and set off against the income for the relevant assessment year.

(3) The amount of deficiency to be allowed as a deduction under this section shall in no case exceed one-half of the total income of the association as computed before making any allowance under this section.

(4) This section applies only to that trade, professional or similar association the income of which or any part thereof is not distributed to its members except as grants to any association or institution affiliated to it.]

[9][**Maintenance of accounts by certain persons carrying on profession or business.**

[10]**44AA.** (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified[11] by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [12][Assessing] Officer to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—

(*i*) if his income from business or profession exceeds [13][*one lakh twenty*] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [14][*ten lakhs*] rupees in any one of the three years immediately preceding the previous year; or

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9. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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

11. For specified professions, *see* Taxmann's Master Guide to Income-tax Act.

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

13. Substituted for "forty" by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Earlier "forty" was substituted for "twenty-five" by the Finance Act, 1992, w.e.f. 1-4-1993.

14. Substituted for "five hundred thousand" by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Earlier "five hundred thousand" was substituted for "two hundred and fifty thousand" by the Finance Act, 1992, w.e.f. 1-4-1993.

(*ii*) where the business or profession is newly set up in any previous year if his income from business or profession is likely to exceed [14a][*one lakh twenty*] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed [15][*ten lakhs*] rupees, [16][during such previous year; or

(*iii*) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD or section 44AE or section 44AF, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year,]

keep and maintain such books of account and other documents as may enable the [17][Assessing] Officer to compute his total income in accordance with the provisions of this Act.

(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe[18], by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]

[19][**Audit of accounts of certain persons carrying on business or profession.**

[20]**44AB.** [21]Every person,—

(*a*) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year [22][***]; or

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14a. Substituted for "forty" by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Earlier "forty" was substituted for "twenty-five" by the Finance Act, 1992, w.e.f. 1-4-1993.

15. Substituted for "five hundred thousand" by the Finance (No. 2) Act, 1998, w.e.f. **1-4-1999.** Earlier "five hundred thousand" was substituted for "two hundred and fifty thousand" by the Finance Act, 1992, w.e.f. 1-4-1993.

16. Substituted for "during such previous year," by the Finance Act, 1997, w.e.f. 1-4-1998.

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

18. *See* rule 6F for prescribed books of account to be maintained by professionals. Form 3C has been prescribed as a Daily Case Register to be maintained by Medical Professionals. For an analysis of rule 6F, *see* **Appendix Two.**

19. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

20. *See* also Circular No. 452, dated 17-3-1986 and Circular No. 561, dated 22-5-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

21. *See* rule 6G. Prescribed audit reports are as under:—
(*i*) Audit report in case of person who carries on business and who is required to get his accounts audited under any other law: Form 3CA
(*ii*) Audit report in case of person who carries on business and who is not required to get his accounts audited under any other law: Form 3CB
(*iii*) Audit report in case of professionals: Form 3CC
(*iv*) Prescribed particulars in case of (*i*) and (*ii*) above: Form 3CD
(*v*) Prescribed particulars in case of (*iii*) above: Form 3CE

22. "or years relevant to the assessment year commencing on the first day of April, 1985, or any subsequent assessment year" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

(*b*) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any [23][previous year; or

(*c*) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD or section 44AE or section 44AF, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,] [24][***],

get his accounts of such previous year [25][***] audited by an accountant before the specified date and [26][furnish by] that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

[27][**Provided** that this section shall not apply to the person, who derives income of the nature referred to in [28][***] section 44B or section 44BB or section 44BBA or section 44BBB, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided further that] in a case where such person is required by or under any other law to get his accounts audited [29][***], it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and [30][furnishes by] that date the report of the audit as required under such other law and a further report in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(*i*) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

[31][(*ii*) "specified date", in relation to the accounts of the previous year relevant to an assessment year means,—

(*a*) where the assessee is a company, the [32][30th day of November] of the assessment year;

(*b*) in any other case, the 31st day of October of the assessment year.]]

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23. Substituted for "previous year," by the Finance Act, 1997, w.e.f. 1-4-1998.

24. "or years relevant to the assessment year commencing on the first day of April, 1985, or any subsequent assessment year" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

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

26. Substituted for "obtain before" by the Finance Act, 1995, w.e.f. 1-7-1995.

27. Substituted for "Provided that" by the Finance Act, 1992, w.r.e.f. 1-4-1985.

28. Words "section 44AC or" omitted by the Finance Act, 1995, w.e.f. 1-7-1995.

29. "by an accountant" omitted by the Finance Act, 1985, w.e.f. 1-4-1985.

30. Substituted for "obtains before" by the Finance Act, 1995, w.e.f. 1-7-1995.

31. Substituted for the following clause (*ii*) by the Finance Act, 1988, w.e.f. 1-4-1989:

'(*ii*) "specified date", in relation to the accounts of the previous year or years relevant to an assessment year, means the date of the expiry of four months from the end of the previous year or, where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later.'

32. Substituted for "31st day of December" by the Finance Act, 1994, w.e.f. 1-4-1994.

Special provision for computing profits and gains from the business of trading in certain goods.

44AC. [33][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

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33. Prior to omission section 44AC, as inserted by the Finance Act, 1988, w.e.f. 1-4-1989 and later amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance Act, 1990, w.e.f. 1-4-1991, read as under:

'44AC. *Special provision for computing profits and gains from the business of trading in certain goods.*—(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, being a person other than a public sector company (hereafter in this section referred to as the buyer), obtaining in any sale by way of auction, tender or any other mode, conducted by any other person or his agent (hereafter in this section referred to as the seller),—

(*a*) any goods in the nature of alcoholic liquor for human consumption (other than Indian-made foreign liquor), a sum equal to forty per cent of the amount paid or payable by the buyer as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head "Profits and gains of business or profession":

Provided that nothing contained in this clause shall apply to a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

Explanation.—For the purposes of this clause, "purchase price" means any amount (by whatever name called) paid or payable by the buyer to obtain the goods referred to in this clause, but shall not include the amount paid or payable by him towards the bid money in an auction, or, as the case may be, the highest accepted offer in case of tender or any other mode;

(*b*) the right to receive any goods of the nature specified in column (2) of the Table below, or such goods, as the case may be, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of the amount paid or payable by the buyer in respect of the sale of such right or as the purchase price in respect of such goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods chargeable to tax under the head "Profits and gains of business or profession".

TABLE

S.No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Timber obtained under a forest lease	Thirty-five per cent
(*ii*)	Timber obtained by any mode other than under a forest lease	Fifteen per cent
(*iii*)	Any other forest produce not being timber	Thirty-five per cent

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall not apply to a buyer (other than a buyer who obtains any goods, from any seller which is a public sector company) in the further sale of any goods obtained under or in pursuance of the sale under sub-section (1).

(3) In a case where the business carried on by the assessee does not consist exclusively of trading in goods to which this section applies and where separate accounts are not maintained or are not available, the amount of expenses attributable to such other business shall be an amount which bears to the total expenses of the business carried on by the assessee the same proportion as the turnover of such other business bears to the total turnover of the business carried on by the assessee.

Explanation.—For the purposes of this section, "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society.'

[34][[35]**Special provision for computing profits and gains of business of civil construction, etc.**

44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in the business of civil construction or supply of labour for civil construction, a sum equal to eight per cent of the gross receipts paid or payable to the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that nothing contained in this sub-section shall apply in case the aforesaid gross receipts paid or payable exceed an amount of forty lakh rupees.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

[36][**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.]

(3) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

[37]**[***(5) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-section (1), and thereupon the Assessing Officer shall proceed to make an assesment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.***]**

[37a]**[***(6) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-section (1), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.***]**

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

35. *See* also Circular No. 737, dated 23-2-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

36. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1994.

37. Inserted by the Income-tax (Second Amendment) Act, 1998, w.r.e.f. **1-4-1997.** Earlier sub-section (5) was inserted by the Finance Act, 1994, w.e.f. 1-4-1994 and later on omitted by the Finance Act, 1997, w.e.f. 1-4-1997.

37a. Inserted by the Finance Act, 1999, w.r.e.f. **1-4-1998**.

Explanation.—For the purposes of this section, the expression "civil construction" includes—

(*a*) the construction or repair of any building, bridge, dam or other structure or of any canal or road;

(*b*) the execution of any works contract.]

[38]**Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.**

44AE. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—

(*i*) being a heavy goods vehicle, shall be an amount equal to two thousand rupees for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or, as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income;

(*ii*) other than a heavy goods vehicle, shall be an amount equal to one thousand eight hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or, as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income.

(3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

[39][**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.]

(4) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

[40]**[***(6) Nothing contained in the foregoing provisions of this section shall apply,*

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38. *See* Circular No. 737, dated 23-2-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

39. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1994.

40. Inserted by the Income-tax (Second Amendment) Act, 1998, w.r.e.f. **1-4-1997.** Earlier sub-section (6) was inserted by the Finance Act, 1994, w.e.f. 1-4-1994 and later on omitted by the Finance Act, 1997, w.e.f. 1-4-1997.

*where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-sections (1) and (2), and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.***]**

[40a]**[***(7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.***]**

Explanation.—For the purposes of this section,—

(*a*) the expressions "goods carriage"[41] and "heavy goods vehicle"[41] shall have the meanings respectively assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(*b*) an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.]

[42][**Special provisions for computing profits and gains of retail business.**

44AF. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in retail trade in any goods or merchandise, a sum equal to five per cent of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that nothing contained in this sub-section shall apply in respect of an assessee whose total turnover exceeds an amount of forty lakh rupees in the previous year.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.

40a. Inserted by the Finance Act, 1999, w.r.e.f. **1-4-1998**.

41. Clause (*14*) and clause (*16*) of section 2 of the Motor Vehicles Act, 1988, define "goods carriage" and "heavy goods vehicle" as follows:

'(14) "goods carriage" means any motor vehicle constructed or adopted for use solely for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods;'

'(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;'

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

(3) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the total turnover or, as the case may be, the income from the said business shall be excluded.]

[42a]**[***(5) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-section (1), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.***]**

[43][**Special provision for computing profits and gains of shipping business in the case of non-residents.**

[44]**44B.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely:—

(*i*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(*ii*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]

[45][*Explanation*.—For the purposes of this sub-section, the amount referred to in clause (*i*) or clause (*ii*) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.]

[46][**Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils.**

44BB. (1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee [47][, being a non-resident,] engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten

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42a. Inserted by the Finance Act, 1999, w.r.e.f. **1-4-1998**.

43. Inserted by the Finance Act, 1975, w.e.f. 1-4-1976.

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

45. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1976.

46. Inserted by the Finance Act, 1987, w.r.e.f. 1-4-1983.

47. Inserted by the Finance Act, 1988, w.r.e.f. 1-4-1983.

per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

Explanation.—For the purposes of this section,—

(*i*) "plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(*ii*) "mineral oil" includes petroleum and natural gas.]

[48][**Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents.**

44BBA. (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of aircraft, a sum equal to five per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.]

[49][**Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects.**

[50]**44BBB.** Notwithstanding anything to the contrary contained in sections 28 to 44AA, in the case of an assessee, being a foreign company, engaged in the business of civil construction or the business of erection of plant or

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

49. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

50. *See* also Circular No. 552, dated 9-2-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf and financed under any international aid programme, a sum equal to ten per cent of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession."]

[51][**Deduction of head office expenditure in the case of non-residents.**[52]

[53]**44C.** Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder, namely:—

(*a*) an amount equal to five per cent of the adjusted total income; or

(*b*) [54][***]

(*c*) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India,

whichever is the least :

Provided that in a case where the adjusted total income of the assessee is a loss, the amount under clause (*a*) shall be computed at the rate of five per cent of the average adjusted total income of the assessee.

Explanation.—For the purposes of this section,—

(*i*) "adjusted total income" means the total income computed in accordance with the provisions of this Act, without giving effect to the allowance referred to in this section or in sub-section (2) of section 32 or the deduction referred to in section 32A or section 33 or section 33A or the first proviso to clause (*ix*) of sub-section (1) of section 36 or any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) [55][or sub-section (3)] of section 74 or sub-section (3) of section 74A or the deductions under Chapter VI-A;

(*ii*) "average adjusted total income" means,—

(*a*) in a case where the total income of the assessee is assessable for each of the three assessment years immediately preceding the relevant assessment year, one-third of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid three assessment years;

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

52. *See* also Circular No. 649, dated 31-3-1993. For details, *see* Taxmann's Master Guide to Income-tax Act.

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

54. Omitted by the Finance Act, 1993, w.e.f. 1-4-1993. Prior to omission, clause (*b*) read as under :

"(*b*) an amount equal to the average head office expenditure; or"

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

(*b*) in a case where the total income of the assessee is assessable only for two of the aforesaid three assessment years, one-half of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid two assessment years;

(*c*) in a case where the total income of the assessee is assessable only for one of the aforesaid three assessment years, the amount of the adjusted total income in respect of the previous year relevant to that assessment year;

(*iii*) [56][***]

(*iv*) "head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of—

(*a*) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;

(*b*) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

(*c*) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and

(*d*) such other matters connected with executive and general administration as may be prescribed.]

[57][**Special provisions for computing income by way of royalties, etc., in the case of foreign companies.**

44D. Notwithstanding anything to the contrary contained in sections 28 to 44C, in the case of an assessee, being a foreign company,—

(*a*) the deductions admissible under the said sections in computing the income by way of royalty or fees for technical services received [58][from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the

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56. Omitted by the Finance Act, 1993, w.e.f. 1-4-1993. Prior to omission clause (*iii*) read as under:

'(*iii*) "average head office expenditure" means,—

(*a*) in a case where any expenditure in the nature of head office expenditure has been allowed as a deduction in computing the income of the assessee chargeable under the head "Profits and gains of business or profession" in respect of each of the three previous years relevant to the assessment years commencing on the 1st day of April, 1974, the 1st day of April, 1975, and the 1st day of April, 1976, one-third of the aggregate amount of the expenditure so allowed;

(*b*) in a case where such expenditure has been so allowed only in respect of two of the aforesaid three previous years, one-half of the aggregate amount of the expenditure so allowed;

(*c*) in a case where such expenditure has been so allowed only in respect of one of the aforesaid three previous years, the amount of the expenditure so allowed;'

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

58. Substituted for the portion beginning with "from an Indian concern" and ending with "with the Indian concern" by the Finance Act, 1983, w.e.f. 1-6-1983.

Indian concern] before the 1st day of April, 1976, shall not exceed in the aggregate twenty per cent of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property;

(*b*) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing the income by way of royalty or fees for technical services received [59][from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the Indian concern] after the 31st day of March, 1976;

(*c*) [60][***]

(*d*) [61][***]

Explanation.—For the purposes of this section,—

(*a*) "fees for technical services" shall have the same meaning as in [62][*Explanation 2*] to clause (*vii*) of sub-section (1) of section 9;

(*b*) "foreign company" shall have the same meaning as in section 80B;

(*c*) "royalty" shall have the same meaning as in [63][*Explanation 2*] to clause (*vi*) of sub-section (1) of section 9;

(*d*) royalty received [64][from Government or an Indian concern in pursuance of an agreement made by a foreign company with Government or with the Indian concern] after the 31st day of March, 1976, shall be deemed to have been received in pursuance of an agreement made before the 1st day of April, 1976, if such agreement is deemed, for the purposes of the proviso to clause (*vi*) of sub-section (1) of section 9, to have been made before the 1st day of April, 1976.]

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59. Substituted for the portion beginning with "from an Indian concern" and ending with "with the Indian concern" by the Finance Act, 1983, w.e.f. 1-6-1983.

60. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, clause (*c*), as inserted by the Finance Act, 1983, w.e.f. 1-6-1983, read as under :

"(*c*) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing income by way of interest received from Government or an Indian concern on moneys borrowed or debt incurred by the Government or the Indian concern in foreign currency;"

61. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, clause (*d*), as inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1989, read as under :

"(*d*) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing the income referred to in clause (*ab*) of sub-section (1) of section 115A."

62. Substituted for "the *Explanation*" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977.

63. Substituted for "the *Explanation*", *ibid*.

64. Substituted for the portion beginning with "from an Indian concern" and ending with "with the Indian concern" by the Finance Act, 1983, w.e.f. 1-6-1983.