

(4) An income-tax authority on making an order under sub-section (2) imposing a penalty, unless he is himself an Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.]

⁵⁸[**Authority competent to make block assessment.**

158BG. The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner ⁵⁹[or Deputy Commissioner] or an Assistant Director ⁵⁹[or Deputy Director], as the case may be :

Provided that no such order shall be passed without the previous approval of—

- (a) the Commissioner or Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997;
- (b) the ⁶⁰[Joint] Commissioner or the ⁶⁰[Joint] Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997.]

Application of other provisions of this Act.

158BH. Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter.]

CHAPTER XV

LIABILITY IN SPECIAL CASES

A.—Legal representatives

Legal representatives.⁶¹

159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

- (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;
- (b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
- (c) all the provisions of this Act shall apply accordingly.

58. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997. Earlier section 158BG was amended by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

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

60. Substituted for “Deputy”, *ibid.*

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

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

B.—Representative assessee—General provisions

Representative assessee.⁶²

160. (1) For the purposes of this Act, “representative assessee” means—

- (i) in respect of the income of a non-resident specified in ⁶³[***] sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;
- (ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;
- (iii) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;
- (iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;
- ⁶⁴(v) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

Explanation 1.—A trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf

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

63. “clause (i) of” omitted by the Finance Act, 1976, w.e.f. 1-6-1976.

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

Validating Act, 1913 (6 of 1913),] shall be deemed, for the purposes of clause (iv), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the ⁶⁵[Assessing] Officer,—

- (i) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and
- (ii) in any other case, within three months from the date of declaration of the trust.

Explanation 2.—For the purposes of clause (v), “oral trust” means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under *Explanation 1* to be a trust declared by a duly executed instrument in writing.]

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

Liability of representative assessee.

161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

⁶⁶[(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate:

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

⁶⁷[***]

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

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

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

67. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Prior to omission, *Explanation* read as under:

Explanation.—For the purposes of this sub-section, “maximum marginal rate” shall have the meaning assigned to it in *Explanation 2* below sub-section (3) of section 164.’

Right of representative assessee to recover tax paid.

162. (1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the ⁶⁸[Assessing] Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

C.—Representative assessee—Special cases

Who may be regarded as agent.⁶⁹

163. (1) For the purposes of this Act, “agent”, in relation to a non-resident, includes any person in India—

- (a) who is employed by or on behalf of the non-resident; or
- (b) who has any business connection with the non-resident; or
- (c) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
- (d) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely:—

- (i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and
- (ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

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

69. See Circular No. 707, dated 11-7-1995. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

(2) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the ⁷⁰[Assessing] Officer as to his liability to be treated as such.

⁷¹[Charge of tax where share of beneficiaries unknown.

164. (1) ⁷²[Subject to the provisions of sub-sections (2) and (3), where] any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as “relevant income”, “part of relevant income” and “beneficiaries”, respectively), ⁷³[tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate:]

Provided that in a case where—

- ⁷⁴[(i) none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an ⁷⁵[association of persons] or is a beneficiary under any other trust; or]
- (ii) the relevant income or part of relevant income is receivable under ⁷⁶[a trust declared by any person by will and such trust is the only trust so declared by him]; or
- (iii) the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the ⁷⁷[Assessing] Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or
- (iv) the relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or

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

71. Substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

72. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

73. Substituted for the portion beginning with “tax shall be charged” and ending with “more beneficial to the revenue” by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

74. Substituted for “(i) none of the beneficiaries has any other income chargeable under this Act; or”, *ibid.*

75. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

76. Substituted for “a trust declared by will” by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

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

any other fund created *bona fide* by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

tax shall be charged ⁷⁸[on the relevant income or part of relevant income as if it were the total income of an ⁷⁹[association of persons]:

⁸⁰[**Provided further** that where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, the preceding proviso shall apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.]

⁸¹[(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, ⁸²[or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2,] ⁸³[or which is of the nature referred to in sub-section (4A) of section 11,] tax shall be charged on so much of the relevant income as is not exempt under section 11 ⁸⁴[or section 12], as if the relevant income not so exempt were the income of an association of persons:

⁸⁵[**Provided** that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]

⁸⁶[(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes ⁸⁷[or is of the nature referred to in sub-clause (iia) of clause (24) of section 2] ⁸⁸[or is of the nature referred to in sub-section (4A) of section 11,] and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) ⁸⁹[is not specifically receivable on behalf or for the benefit of any one

78. Substituted for “as if the relevant income or part of relevant income” by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

79. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

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

81. 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.

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

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

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

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

86. 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.

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

88. Inserted by the Finance Act, 1983, w.e.f. 6-10-1984.

89. Substituted for the portion beginning with “is not specifically receivable” and ending with “whichever course would be more beneficial to the revenue:” by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of—

- (a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and
- (b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate:]

Provided that in a case where—

- ⁹⁰[(i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or]
- (ii) the relevant income is receivable under ⁹¹[a trust declared by any person by will and such trust is the only trust so declared by him]; or
- (iii) the relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the ⁹²[Assessing] Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust, to the extent it is not for charitable or religious purposes, was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance,

tax shall be charged ⁹³[on the relevant income] as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an association of persons:]

⁹⁴[**Provided further** that where the relevant income consists of, or includes, profits and gains of business, the preceding proviso shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him :

90. Substituted for “(i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act; or” by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

91. Substituted for “a trust declared by will”, *ibid.*

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

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

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

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]

⁹⁵[*Explanation 1.*—For the purposes of this section,—

- (i) any income in respect of which the persons mentioned in clause (iii) and clause (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed ;
- (ii) the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is received shall be deemed to be indeterminate or unknown unless the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable, are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

Explanation 2.—⁹⁶[*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

⁹⁷[**Charge of tax in case of oral trust.**

164A. Where a trustee receives or is entitled to receive any income on behalf or for the benefit of any person under an oral trust, then, notwithstanding anything contained in any other provision of this Act, tax shall be charged on such income at the maximum marginal rate.

Explanation.—For the purposes of this section,—

- (i) ⁹⁸[***]
- (ii) “oral trust” shall have the meaning assigned to it in *Explanation 2* below sub-section (1) of section 160.]

Case where part of trust income is chargeable.

165. Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust

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

96. Prior to its omission, *Explanation 2* stood as under :

‘*Explanation 2.*—In this section, “maximum marginal rate” means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an association of persons as specified in the Finance Act of the relevant year.’

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

98. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, clause (i) of *Explanation* stood as under:

‘(i) “maximum marginal rate” shall have the meaning assigned to it in *Explanation 2* below sub-section (3) of section 164;’

which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—Representative assesseees - Miscellaneous provisions

Direct assessment or recovery not barred.

⁹⁹**166.** Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

Remedies against property in cases of representative assesseees.

167. The ¹[Assessing] Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

²[*DD.—Firms, association of persons and body of individuals*]

³[**Charge of tax in the case of a firm.**

167A. In the case of a firm which is assessable as a firm, tax shall be charged on its total income at the ⁴[rate as specified in the Finance Act of the relevant year.]

99. See also Letter [F. No. 45/78/66-ITJ (5)], dated 24-2-1967. For details, see Taxmann's Master Guide to Income-tax Act.

1. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
2. Substituted for the existing sub-heading 'DD' by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-heading 'DD', as inserted by the Finance Act, 1981, w.e.f. 1-4-1981 and later amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :
"*DD.—Association of persons and body of individuals*"
3. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 167A was omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to omission, section 167A, as substituted by the Finance Act, 1985, w.e.f. 1-4-1985, read as under :
'167A. *Charge of tax where shares of members unknown.*—Where the individual shares of the members of an association of persons (other than a company or co-operative society) in the whole or any part of the income of such association are indeterminate or unknown, tax shall be charged on the total income of the association at the maximum marginal rate.

Explanation.—For the purposes of this section,—

- (a) "maximum marginal rate" shall have the meaning assigned to it in *Explanation 2* below sub-section (3) of section 164;
 - (b) the individual shares of the members of an association of persons in the whole or any part of the income of such association shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or at any time thereafter.'
4. Substituted for "maximum marginal rate" by the Finance Act, 1997, w.e.f. 1-4-1998.

⁵[Charge of tax where shares of members in association of persons or body of individuals unknown, etc.]

⁶167B. (1) Where the individual shares of the members 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) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)],—

- (i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;
- (ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.]

E.—Executors

Executors.

168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

- (a) if there is only one executor, then, as if the executor were an individual; or
- (b) if there are more executors than one, then, as if the executors were an association of persons;

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

6. See also Circular No. 577, dated 4-9-1990. For details, see Taxmann's Master Guide to Income-tax Act.

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, “executor” includes an administrator or other person administering the estate of a deceased person.

Right of executor to recover tax paid.

169. The provisions of section 162 shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee.

F.—Succession to business or profession

Succession to business otherwise than on death.

170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

- (a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;
- (b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the ⁷[Assessing] Officer shall record a finding to that effect and the sum payable by the

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

predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, “income” includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

G.—Partition

Assessment after partition of a Hindu undivided family.

171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the ⁸[Assessing] Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the ⁸[Assessing] Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the ⁸[Assessing] Officer under this section, and the partition took place during the previous year,—

- (a) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and
- (b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (2) of section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the ⁸[Assessing] Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (b) of sub-section (4) shall, so far as may be, apply to the case.

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

(6) Notwithstanding anything contained in this section, if the ^{8a}[Assessing] Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the ^{8a}[Assessing] Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

⁹[(9) Notwithstanding anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st day of December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided,—

- (a) no claim that such partial partition has taken place shall be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition had taken place and any finding recorded under sub-section (3) to that effect whether before or after the 18th day of June, 1980, being the date of introduction of the Finance (No. 2) Bill, 1980, shall be null and void;
- (b) such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place;
- (c) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;
- (d) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition,

and the provisions of this Act shall apply accordingly.]

Explanation.—In this section,—

- (a) “partition” means—
 - (i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or
 - (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

8a. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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

- (b) “partial partition” means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H.—Profits of non-residents from occasional shipping business

Shipping business of non-residents.

¹⁰172. (1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India ¹¹[***].

(2) Where such a ship carries passengers, livestock, mail or goods shipped at a port in India, ¹²[seven and a half] per cent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the ¹³[Assessing] Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat:

Provided that where the ¹³[Assessing] Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the ¹³[Assessing] Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the ¹³[Assessing] Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates ¹⁴[in force] applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

(5) For the purpose of determining the tax payable under sub-section (4), the ¹⁵[Assessing] Officer may call for such accounts or documents as he may require.

10. See also Circular No. 723, dated 19-9-1995, Circular No. 730, dated 14-12-1995 and Circular No. 732, dated 20-12-1995. For details, see Taxmann’s Master Guide to Income-tax Act.

11. “unless the Income-tax Officer is satisfied that there is an agent of the non-resident from whom the tax will be recoverable under the other provisions of this Act” omitted by the Finance Act, 1975, w.e.f. 1-6-1975.

12. Substituted for “one-sixth”, *ibid.*

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

14. Substituted for “for the time being” by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, livestock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

¹⁶[(8) For the purposes of this section, the amount referred to in sub-section (2) shall include the amount paid or payable by way of demurrage charge or handling charge or any other amount of similar nature.]

I.—Recovery of tax in respect of non-residents

Recovery of tax in respect of non-resident from his assets.

173. Without prejudice to the provisions of sub-section (1) of section 161 or of section 167, where the person entitled to the income referred to in clause (i) of sub-section (1) of section 9 is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are, or may at any time come, within India.

J.—Persons leaving India

Assessment of persons leaving India.

174. (1) Notwithstanding anything contained in section 4, when it appears to the ¹⁷[Assessing] Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

16. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1976.

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

(3) The ¹⁸[Assessing] Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the ¹⁸[Assessing] Officer may serve a notice upon such individual requiring him to furnish within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner ¹⁹[as a return under clause (i) of sub-section (1) of section 142], setting forth his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a ²⁰[notice issued under clause (i) of sub-section (1) of section 142].

(5) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the ¹⁸[Assessing] Officer under ²¹[clause (i) of sub-section (1) of section 142 or] section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in ²¹[clause (i) of sub-section (1) of section 142 or] section 148, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the ¹⁸[Assessing] Officer may think proper.

K.—Persons trying to alienate their assets

Assessment of persons likely to transfer property to avoid tax.

175. Notwithstanding anything contained in section 4, if it appears to the ¹⁸[Assessing] Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the ¹⁸[Assessing] Officer commences proceedings under this section shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2), (3), (4), (5) and (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

L.—Discontinuance of business, or dissolution

Discontinued business.

22176. (1) Notwithstanding anything contained in section 4, where any business or profession is discontinued in any assessment year, the income of the

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

19. Substituted for "as a return under sub-section (2) of section 139", *ibid.*, w.e.f. 1-4-1989.

20. Substituted for "notice issued under sub-section (2) of section 139", *ibid.*

21. Substituted for "sub-section (2) of section 139 or sub-section (1) of", *ibid.*

22. See also Instruction No. 703, dated 12-6-1974. For details, see Taxmann's Master Guide to Income-tax Act.

period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the ²³[Assessing] Officer, be charged to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the ²³[Assessing] Officer notice of such discontinuance within fifteen days thereof.

²⁴[(3A) Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance.]

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the provisions of this section, the ²³[Assessing] Officer may serve on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under ²⁵[clause (i) of sub-section (1) of section 142] and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under ²⁵[clause (i) of sub-section (1) of section 142].

(6) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, any notice issued by the ²³[Assessing] Officer under ²⁵[clause (i) of sub-section (1) of section 142 or] section 148 in respect of any tax chargeable under any other provisions of this Act may, notwithstanding anything contained in ²⁶[clause (i) of sub-section (1) of section 142 or] section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days, as the ²⁷[Assessing] Officer may think proper.

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

24. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

25. Substituted for "sub-section (2) of section 139" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

26. Substituted for "sub-section (2) of section 139 or sub-section (1) of" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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

Association dissolved or business discontinued.

177. (1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the ²⁸[Assessing] Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the ²⁸[Assessing] Officer or the ²⁹[* * *] ³⁰[Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

Company in liquidation.

178. (1) Every person—

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the ²⁸[Assessing] Officer who is entitled to assess the income of the company.

(2) The ²⁸[Assessing] Officer shall, after making ²⁸such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the ²⁸[Assessing] Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

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

29. Words “Deputy Commissioner (Appeals) or the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

³¹[(3) The liquidator—

- (a) shall not, without the leave of the ³²[Chief Commissioner or Commissioner], part with any of the assets of the company or the properties in his hands until he has been notified by the ³³[Assessing] Officer under sub-section (2) ; and
- (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the ³²[Chief Commissioner or Commissioner] reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay :

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

³⁴[*M.—Private companies*]

Liability of directors of private company in liquidation.

179. ³⁵[(1)] Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), ³⁶[where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and

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

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

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

34. Substituted for "M.—Private company in liquidation" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

35. Inserted, *ibid.*

36. Substituted for "when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year", *ibid.*

severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

³⁷[(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.]

N.—Special provisions for certain kinds of income

³⁸**Royalties or copyright fees for literary or artistic work.**

180. Where the time taken by the author of a literary or artistic work in the making thereof is more than twelve months, the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment in such manner and to such period as may be prescribed.

The following proviso to section 180 shall be inserted by the Finance Act, 1999, w.e.f. 1-4-2000 :

Provided that nothing contained in this section shall apply in relation to the previous year relevant to the assessment year commencing on or after the 1st day of April, 2000.

Explanation.—For the purposes of this section, the expression “author” includes a joint author, and the expression “lump sum”, in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

³⁹**[Consideration for know-how.**

180A. Where the time taken by an individual, who is resident in India, for developing any know-how is more than twelve months, he may elect that the gross amount of any lump sum consideration received or receivable by him during the previous year ^{39a}*[relevant to the assessment year commencing on the 1st day of April, 2000 or earlier assessment years]* for allowing use of such know-how shall be treated for the purposes of charging income-tax for that year and for each of the two immediately preceding previous years as if one-third thereof

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

38. See rule 9(2) for manner of computation of tax on royalty, etc., in certain cases. See also **Appendix Two** for analysis of rule 9(2).

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

39a. The italicised words shall be inserted by the Finance Act, 1999, w.e.f. **1-4-2000**.

were included in his income chargeable to tax for each of those years respectively and if he so elects, notwithstanding anything contained in any other provision of this Act,—

- (a) such gross amount shall be so treated, and
- (b) the assessments for each of the two preceding previous years shall, if made, be accordingly rectified under section 154, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the amount was received or receivable by such individual is made.

Explanation.—For the purposes of this section, the expression “know-how” has the meaning assigned to it in section 35AB.]

⁴⁰[***]

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

⁴¹[A.—*Assessment of firms*]

Assessment of registered firms.

182. ⁴²[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

40. Section 181 and sub-heading “O—Liability of State Governments” omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its omission, section 181 as amended by the Finance Act, 1965, w.e.f. 1-4-1965, stood as under :

“181. *Interest on tax-free securities of a State Government.*—Income-tax shall be payable by a State Government on the interest on any security issued by it tax-free at such rate not exceeding twenty-five per cent as may be notified by the Central Government in the Official Gazette from time to time.”

41. 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.

42. Prior to omission, section 182, as omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

“182. *Assessment of registered firms.*—(1) Notwithstanding anything contained in sections 143 and 144 and subject to the provisions of sub-section (3), in the case of a registered firm, after assessing the total income of the firm,—

- (i) the income-tax payable by the firm itself shall be determined ; and
- (ii) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly.

(2) If such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of sections 70 to 75.

(3) When any of the partners of a registered firm is a non-resident, the tax on his share in the income of the firm shall be assessed on the firm at the rate or rates which would be applicable if it were assessed on him personally, and the tax so assessed shall be paid by the firm.

(4) A registered firm may retain out of the share of each partner in the income of the firm a sum not exceeding thirty per cent thereof until such time as the tax which may be levied on the partner in respect of that share is paid by him ; and where the tax so levied cannot be recovered from the partner, whether wholly or in part, the firm shall be liable to pay the tax, to the extent of the amount retained or could have been so retained.”

Assessment of unregistered firms.

183. ⁴³[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

⁴⁴[**Assessment as a firm.**]

184. (1) A firm shall be assessed as a firm for the purposes of this Act, if—
(i) the partnership is evidenced by an instrument ; and

43. Prior to omission, section 183, as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and later omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and then reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

“183. *Assessment of unregistered firms.*—In the case of an unregistered firm, the Assessing Officer—

- (a) may determine the tax payable by the firm itself on the basis of the total income of the firm ; or
- (b) if, in his opinion, the aggregate amount of the tax payable by the firm if it were assessed as a registered firm and the tax payable by the partners individually if the firm were so assessed would be greater than the aggregate amount of the tax payable by the firm under clause (a) and the tax which would be payable by the partners individually, may proceed to make the assessment under sub-section (1) of section 182 as if the firm were a registered firm ; and, where the procedure specified in this clause is applied to any unregistered firm, the provisions of sub-sections (2), (3) and (4) of section 182 shall apply thereto as they apply in relation to a registered firm.”

44. Substituted for sub-heading “B” and sections 184, 185 and 186 by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-heading “B” and sections 184, 185 and 186 as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

*“B.—Registration of firms**

184. *Application for registration.*—(1) An application for registration of a firm for the purposes of this Act may be made to the Assessing Officer on behalf of any firm if—

- (i) the partnership is evidenced by an instrument ; and
- (ii) the individual shares of the partners are specified in that instrument.

(2) Such application may, subject to the provisions of this section, be made either during the existence of the firm or after its dissolution.

(3) The application shall be made to the Assessing Officer having jurisdiction to assess the firm, and shall be signed—

- (a) by all the partners (not being minors) personally ; or
- (b) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

Explanation.—In the case of any partner who is absent from India or is a lunatic or an idiot, the application may be signed by any person duly authorised by him in this behalf, or, as the case may be, by a person entitled under law to represent him.

(4) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought :

Provided that the Assessing Officer may entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year.

(Contd. on p. 1.609)

(Contd. from p. 1.608)

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof :

Provided that if the Assessing Officer is satisfied that for sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors), or, where the application is made after the dissolution of the firm, by all the persons referred to in clause (b) of sub-section (3), to be a correct copy, or a certified copy of the instrument; and in such cases the application shall be accompanied by a duplicate copy of the original instrument.

(6) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(7) Where registration is granted or is deemed to have been granted to any firm for any assessment year, it shall have effect for every subsequent assessment year :

Provided that—

- (i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and
- (ii) the firm furnishes, before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income for such subsequent assessment year, a declaration to that effect, in the prescribed form and verified in the prescribed manner, so, however, that where the Assessing Officer is satisfied that the firm was prevented by sufficient cause from furnishing the declaration within the time so allowed, he may allow the firm to furnish the declaration at any time before the assessment is made.

(8) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section.

185. *Procedure on receipt of application.*—(1) On receipt of an application for the registration of a firm, the Assessing Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

- (a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year ;
- (b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

Explanation.—For the purposes of this section and section 186, a firm shall not be regarded as a genuine firm if any partner of the firm was, in relation to the whole or any part of his share in the income or property of the firm, at any time during the previous year, a benamidar—

- (a) of any other partner to whom the first-mentioned partner does not stand in the relationship of a spouse or minor child, or
- (b) of any person, not being a partner of the firm, and any of the other partners knew or had reason to believe that the first-mentioned partner was such *benamidar* and such knowledge or belief had not been communicated by such other partner to the Assessing Officer in the prescribed manner.

(2) Where the Assessing Officer considers that the application for registration is not in order, he shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation ; and if the defect is not rectified within that period, the Assessing Officer shall, by order in writing, reject the application.

(3) Where the Assessing Officer considers that the declaration furnished by a firm in pursuance of sub-section (7) of section 184 is not in order, he shall intimate the defect to the firm and give it an opportunity to rectify the defect in the declaration within a period of one month from the date of such intimation ; and if the defect is not rectified within that period, the Assessing Officer shall, by order in writing, declare that the registration granted to the firm shall not have effect for the relevant assessment year.

(Contd. on p. 1.610)

(Contd. from p. 1.609)

(4) Where a firm is registered for any assessment year, the Assessing Officer shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original instrument, as the case may be, to the effect that the firm has been registered under this Act, for that assessment year ; and where a declaration under sub-section (7) of section 184 is furnished by the firm, for the relevant subsequent assessment year.

(5) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in section 144, the Assessing Officer may refuse to register the firm for the assessment year.

(6) Notwithstanding anything contained in sub-sections (1) to (4), where a firm has made an application for registration in relation to an assessment year and has furnished the return for that assessment year, such firm shall be deemed to have been registered under this section on the expiry of the period for serving notice as specified in the proviso to sub-section (2) of section 143 in respect of such return :

Provided that nothing in this sub-section shall affect the power of the Assessing Officer to intimate the defect to the firm under sub-section (2) and where any such intimation is sent, all the provisions of sub-section (2) shall apply.

(7) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Second Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

186. *Cancellation of registration.*—(1) If, where a firm has been registered or is deemed to have been registered, or its registration has effect under sub-section (7) of section 184 for an assessment year, the Assessing Officer is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard cancel the registration of the firm for that assessment year :

Provided that no such cancellation shall be made after the expiry of eight years from the end of the assessment year in respect of which registration has been granted or is deemed to have been granted or has effect :

Provided further that the Assessing Officer shall not cancel the registration granted under sub-section (1) of section 185 except with the previous approval of the Deputy Commissioner.

(2) If, where a firm has been registered or is deemed to have been registered or its registration has effect under sub-section (7) of section 184 for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in section 144, the Assessing Officer may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen days' notice intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard.

(3) Where the registration of a firm is cancelled for any assessment year, the Assessing Officer shall amend the assessments of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm.

(4) The provisions of section 154 shall, so far as may be, apply to the amendments of the assessments of the firm and its partners under sub-section (3) of this section, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the order cancelling the registration was passed.”

*For relevant departmental circulars and clarifications, see Letter [F.No. 26/12/67-IT (A-II)], dated 15-11-1967, Circular No. 4-D (XXV-25), dated 31-1-1966, Circular No. 3P(XXV-22), [F.No. 3(16)-63/TPL], dated 29-7-1964, Letter [F.No. 26/3/65-IT(A-I)], dated 26-6-1965, Circular No. 289, dated 29-12-1980, Letter [F.No. 279/70/77-ITJ (Extracts)], dated 4-8-1977, Letter [F.No. 26/3/65-IT(A-I)], dated 20-5-1967, Instruction No. 26, dated 20-3-1969, Letter [F.No. 210/13/74-IT (A-II)(Extracts)], dated 19-3-1976 and Circular No. 224, dated 22-6-1977.

For relevant rules, see rules 22 and 23 and Form Nos. 11 and 11A ; rule 24 and Form No. 12 ; rule 24A and Form No. 12A and rule 25.

(ii) the individual shares of the partners are specified in that instrument.

(2) A certified copy of the instrument of partnership referred to in sub-section (1) shall accompany the return of income of the firm of the previous year relevant to the assessment year commencing on or after the 1st day of April, 1993 in respect of which assessment as a firm is first sought.

Explanation.—For the purposes of this sub-section, the copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(3) Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.

(4) Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year and all the provisions of this section shall apply accordingly.

(5) Notwithstanding anything contained in the foregoing provisions of this section, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall not be assessed as such for the said assessment year and, thereupon, the firm shall be assessed in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly.

Assessment when section 184 not complied with.

185. Where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be assessed for that assessment year in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly.]

C.—Changes in constitution, succession and dissolution

Change in constitution of a firm.

187. (1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment :

⁴⁵[***]

45. Omitted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to omission, the proviso, as omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

“**Provided** that—

- (i) the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same ; and
- (ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.”

(2) For the purposes of this section, there is a change in the constitution of the firm—

- (a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change ; or
- (b) where all the partners continue with a change in their respective shares or in the shares of some of them :

⁴⁶[**Provided** that nothing contained in clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners.]

Succession of one firm by another firm.

188. Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

⁴⁷[**Joint and several liability of partners for tax payable by firm.**

188A. Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of this Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.]

Firm dissolved or business discontinued.

189. (1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the ⁴⁸[Assessing] Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the ⁴⁹[Assessing] Officer or the ⁵⁰[***] ⁵¹[Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

46. Inserted by the Taxation Laws (Amendment) Act, 1984, with retrospective effect from 1-4-1975.

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

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

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

50. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Explanation.—⁵²[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

⁵³[**Provisions applicable to past assessments of firms.**]

189A. In relation to the assessment of any firm and its partners for the assessment year commencing on the 1st day of April, 1992, or any earlier assessment year, the provisions of this Chapter as they stood immediately before the 1st day of April, 1993, shall continue to apply.]

CHAPTER XVII

COLLECTION AND RECOVERY OF TAX

A.—General

Deduction at source and advance payment.

⁵⁴**190.** (1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction ⁵⁵[or collection] at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.

52. Prior to omission, *Explanation*, as inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975 and omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

“Explanation.—The amount of tax referred to in this sub-section shall also include that part of the share of each partner in the income of the firm before its discontinuance or dissolution which the firm could have retained under sub-section (4) of section 182 but which has not been so retained.”

53. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 189A, which made provisions applicable to past assessments of firms and inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, was omitted by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date.

54. For clarification regarding tax deduction at source under Chapter XVII clarifying that payment of any sum shall be liable for deduction of tax only under one section, *see* Circular No. 720, dated 30-8-1995. For details, *see* Taxmann’s Master Guide to Income-tax Act.

55. Inserted by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-6-1988.