

Chaturvedi & Pithisaria's

INCOME TAX LAW

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OMITTED/INOPERATIVE PROVISIONS OF 1961 ACT **RELEVANT TO VOLUME 3**

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Omitted/Phased out provisions of section 10 of the 1961 Act

CASUAL AND NON-RECURRING RECEIPTS [Omitted s. 10(3)]

Legislative amendments under 1961 Act.—I. The Finance Act, 1972.—By the Finance Act, 1972 (16 of 1972), section 10(3) was substituted (w. e. f. 1-4-1972).

The scope and effect of the above substitution have been elaborated in the following portion of the *Departmental Circular No. 108, dated 20-3-1973*:—

‘6. Under the provisions of the Income-tax Act, receipts which are of a casual and non-recurring nature are exempt from tax except where the receipts constitute capital gains or arise from a business or the exercise of profession, vocation or occupation or are by way of additions to the remuneration of an employee. In view of this exemption, no tax is currently chargeable in respect of winnings from lotteries, crossword puzzles, races, card games or from gambling or betting. The exemption from tax of such receipts is not in keeping with the principle of taxing equally persons with equal capacity to pay. The exemption also provides scope for tax evasion and conversion of ‘black’ money into ‘white’ by ascribing income which would normally be taxable to winnings from lotteries, races, card games, etc. The Finance Act, 1972, has made the following amendments to the Income-tax Act with a view to withdrawing the exemption currently available in respect of casual and non-recurring receipts:

* * *

- (iii) Clause (3) of section 10 of the Income-tax Act has been substituted by a new clause. The effect of this change will be that casual and non-recurring receipts, other than winnings from lotteries, which are in excess of ₹ 1,000 in a year will be included in the total income in the case of all categories of assessee and charged to tax at normal rates. The exemption of the first ₹ 1,000 of income will, however, not be available in respect of capital gains, receipts arising from business or exercise of profession, vocation or occupation or receipts by way of addition to remuneration of an employee and such income will continue to be chargeable to tax on the existing basis. It should, however, be noted that receipts, which are of a casual and non-recurring nature, will be liable to income-tax only if they can properly be characterized as “income” either in its general connotation or within the extended meaning given to the term by the Income-tax Act. Hence, gifts of a purely personal nature will not be chargeable to income-tax, except when they can be regarded as an addition to the salary or when they arise from the exercise of a profession or vocation. Similarly, capital assets inherited or acquired on partition will not also be liable to income-tax. [Section 4(a) of the Finance Act, 1972]

* * *

7. The provisions set forth in the preceding paragraph have come into force with effect from 1st April, 1972. It has, however, specifically been provided in section 59 of the Finance Act, 1972, that income by way of casual and non-recurring receipts will continue to be exempt from income-tax for the assessment year 1972-73 to the same extent as hitherto. [Section 59 of the Finance Act, 1972].

II. The Finance Act, 1986.—By the Finance Act, 1986 (23 of 1986), section 10(3) was amended (w. e. f. 1-4-1987).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 461, dated 9-7-1986*:—

‘Receipts of casual and non-recurring nature—Enhancement of exemption limit.—10. Under the existing provisions of section 10(3) of the Income-tax Act, any receipts which are of a casual and non-recurring nature, subject to certain exceptions, to the extent such receipts do not exceed 1,000 rupees in the aggregate, are not included in computing the total income of an assessee. The Finance Act, 1986, has raised this exemption limit to ₹ 5,000 which will be applicable to the assessment year 1987-88 and subsequent years. [Section 3(a) of the Finance Act, 1986].’

III. The Finance (No. 2) Act, 1991.—By the Finance (No. 2) Act, 1991 (49 of 1991), the following amendments (w. e. f. 1-10-1991) were made—

- proviso (iii) to section 10(3) was amended; and
- proviso (iv) to section 10(3) was inserted.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 621, dated 19-12-1991*:—

'Modification of the tax deduction at source provisions regarding winnings from horse races.—56. Under the existing provisions of sub-section (3) of section 10 of the Income-tax Act, casual and non-recurring receipts up to five thousand rupees are not to be included in the total income of a previous year of any person with certain exceptions. As a result, income by way of winnings from races including horse races up to five thousand rupees in a financial year is exempt from income-tax. Such income in excess of ₹ 5,000 is charged to income-tax at the rate of forty per cent. Section 194BB of the Income-tax Act relating to deduction of income-tax at source at the time of payment of such income also provides that the tax will be deducted at source only if the amount of income exceeds five thousand rupees.

56.1 The aforesaid provisions have led to widespread practice of splitting of winnings from horse races in order to evade tax thereon. Therefore, sub-section (3) of section 10 has been amended with a view to exclude winnings from races from its ambit. Section 194BB of the Income-tax Act has also been amended in order to bring down the monetary limit below which there is no requirement for deduction of tax at source from rupees five thousand to rupees two thousand and five hundred.

56.2 These amendments take effect from 1st October, 1991. [*Sections 5 and 53*].

IV. The Finance Act, 1992.—By the Finance Act, 1992 (18 of 1992), the following amendments (w. e. f. 1-4-1992) were made—

- a new 1st proviso to section 10(3) was inserted and the existing 1st proviso to section 10(3) was made 2nd proviso to section 10(3);
- clause (iii) of the 2nd proviso to section 10(3) was amended; and
- clause (iv) of the 2nd proviso to section 10(3) was omitted.

The scope and effect of the above amendments have been elaborated in the following portion of the Departmental Circular No. 636, dated 31-8-1992:—

'Provision for income-tax exemption on winnings from horse races.—16. The income-tax exemption available to income by way of winnings from races including horse races, to the extent such income does not exceed five thousand rupees, was withdrawn with effect from 1st October, 1991. It had been represented that it is difficult for the recipients of the aforesaid income to keep a record of small amounts received. Therefore, the Finance Act, 1992, seeks to amend clause (3) of section 10 of Income-tax Act, to provide that winnings from races including horse races will not be included in the total income of a person, to the extent such receipts do not exceed two thousand five hundred rupees in the aggregate in a previous year.

16.1 This amendment takes effect from 1st April, 1992. [*Section 4*].

Omission of section 10(3) of 1961 Act.—*The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), section 10(3) was omitted (w. e. f. 1-4-2003).

The scope and effect of the above omission have been elaborated in the following portion of the Departmental Circular No. 8 of 2002, dated 27-8-2002:—

'6. Casual and non-recurring receipts to become taxable.—6.1 Under the existing provisions contained in clause (3) of section 10, any receipt below ₹ 5,000, which is of casual and non-recurring nature is exempt from payment of income-tax. In the case of winnings from horse races, the exemption is available for ₹ 2,500 only. This clause does not apply to receipts arising from business or profession or receipts by way of addition to the remuneration of an employee or to the capital gains income.

6.2 Though the Finance Act, 2002, clause (3) of section 10 has been omitted so as to bring all the casual and non-recurring receipts including windfall gains from betting, horse racing, lotteries, etc., under the tax net.

6.3 This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent assessment years. [*Section 4(a)*].

CASUAL AND NON-RECURRING RECEIPTS—SECTION 10(3) LAW UP TO AND INCLUSIVE OF ASSESSMENT YEAR 1972-73

Provisions analysed.—**Clause (3) of section 10** provides that in computing the total income of a previous year, any receipts which are of a *casual* and *non-recurring* nature shall not be included unless such receipts amount to—

- (i) capital gains, chargeable under section 45; or
- (ii) receipts arising from business or the exercise of a profession or occupation; or
- (iii) receipts by way of addition to the remuneration of an employee.

Thus, the positive test to be applied should be, firstly, to find out whether or not the receipt is a casual and non-recurring receipt; and if it is found to have satisfied this requirement, then it is further to be examined whether the receipt does fall into any of the three categories of income referred to in sub-clauses (i), (ii) and (iii). Casual

income falling into any of the three categories referred to in sub-clauses (i), (ii) and (iii) is taxable and cuts the exemption granted by section 10(3) [*K. Sankaran v. CIT*, (1978) 115 ITR 561 (Ker)]. Section 10(3) corresponds to section 4(3)(vii) of the 1922 Act.

In order to attract section 10(3), two conditions are required to be satisfied, viz., that the receipt should be casual and non-recurring and that it should not arise by way of business income, salary income or capital gains chargeable under section 45 [*Cadell Weaving Mill Co.P. Ltd. v. CIT*, (2001) 249 ITR 265, 287-88 (Bom)].

The enquiry may also be begun at the other end of the ladder. Whenever there is a receipt, its source has to be scrutinised to find out whether it falls under Business income, or Capital gains, or Salary. If so, it is taxable under the appropriate head. If not, a further enquiry is to be made whether the receipt is purely casual and non-recurring [see, *Ram Sarup v. CIT*, (1968) 67 ITR 431 (All); *B. Malick v. CIT*, (1968) 67 ITR 616 (All)].

In the substantive clause, an income which was *casual and non-recurring* in nature was excluded from being charged as income of the assessee. Due to the use of the word, “and”, existence of both the conditions was mandatory. Absence of any one of them disentitled the assessee from claiming any benefit under the clause [*Universal Radiators v. CIT*, (1993) 201 ITR 800, 805 (SC)].

In *CIT v. Seshasayee Bros. (P.) Ltd.* [(1996) 222 ITR 818, 820, 826 (Mad)], the Tribunal was held right in holding that the sum of Rs. 20,000 being the deposit made by an intending buyer, forfeited and appropriated by the assessee, could not at all be considered as income to bring it within the term ‘casual receipt’ falling under section 10(3).

In *Smt. Anand Bala Bhushan v. CIT* [(1996) 217 ITR 144, 146-47 (All)], the receipt of compensation for surrendering building, built on leasehold land, has been held not a casual receipt.

Burden of proof.—The characteristic which appears to be necessary for obtaining an exemption is that the receipt should be of a casual and non-recurring nature, unless of course it is shown by the department that the receipt is taxable for other reasons notwithstanding its casual and non-recurring nature. In other words, *the burden of bringing the receipt within an exception to the exemption, which the receipt obtains by proof of its casual and non-recurring character, is on the department*. The primary condition for obtaining the exemption is that the assessee should prove its casual and non-recurring character. After that, *the department must, on the evidence on record*, prove the receipt to fall under any of the sub-clauses (i), (ii) and (iii), e.g., that it has resulted from the exercise of a profession, vocation or occupation, etc. The question of *burden of proof* is of importance only if evidence is meagre or if there is some uncertainty about facts because evidence on the two sides is equi-balanced [Per M.H. Beg J., in *B. Malick v. CIT*, (1968) 67 ITR 616, 631 (All). Also see, *Lala Indra Sen, In re*, (1940) 8 ITR 187, 207 (All)].

Casual and non-recurring—meaning of.—In order to attract exemption under section 10(3), a receipt must be both casual as well as non-recurring [*CIT v. Dr. P.N. Beh*, (1972) 84 ITR 125, 132 (Del); *K. Sankaran v. CIT*, (1978) 115 ITR 561 (Ker); *B. Malick v. CIT*, (1968) 67 ITR 616, 631 (All); *CIT v. Dr. Chinna Oomen*, (1984) 150 ITR 583 (Mad)]. Neither the word ‘casual’ nor the word ‘non-recurring’ has been defined in the Act. These words must, therefore, be construed in their plain and ordinary sense [Per Iqbal Ahmad J., in *Lala Indra Sen, In re*, (1940) 8 ITR 187, 200 (All); *Ramanathan Chettiar v. CIT*, (1967) 63 ITR 458, 464 (SC); *CIT v. Kameshwar Singh*, (1953) 23 ITR 212, 224 (Pat)]. According to the *Shorter Oxford English Dictionary*, the word “casual” is defined to mean: “(i) Subject to or produced by chance; accidental, fortuitous, (ii) coming at uncertain times; not to be calculated on, unsettled”. The word “casual” as defined in the third edition of *Webster’s New International Dictionary*, means as follows: “Subject or produced as a result of chance; without design; not resulting from plan; without specific motivation, special interest or constant purpose; without foresight, plan or method; occurring, encountered, acting, or performed without regularity or at random; occasional”. In *Murray’s Dictionary*, the word “casual” is said to mean: “(1) Subject to, depending on, or produced by chance; accidental, fortuitous. (2) Occurring and coming out at uncertain times; not to be calculated on, uncertain, unsettled. (3) Subject to chance or accident”. What is, therefore, essential about the receipt being “casual” is that it must be the production of a chance, accident or fortuitous and that means that it is neither calculated nor settled nor is there any likelihood of its coming at a certain time [*CIT v. Dr. P.N. Beh*, (1972) 84 ITR 125, 132 (Delhi)].

‘Casual’, according to the dictionary, means ‘accidental or irregular’. This meaning has been approved by the Supreme Court in *Ramanathan Chettiar v. CIT* [(1967) 63 ITR 458 (SC)]. Non-recurring is one which is not likely to occur again in a year [*Universal Radiators v. CIT*, (1993) 201 ITR 800, 805 (SC)].

A receipt which is foreseen and anticipated cannot be regarded as casual even if it is not likely to recur again [*Ramanathan Chettiar v. CIT*, (1967) 63 ITR 458, 464 (SC); *CIT v. Maharajadhiraj Sir Kameswar Singh*, (1953) 23 ITR 212, 224 (Pat)]. The word ‘casual’ in this clause must be read as meaning the antithesis of that which is governed by something more than mere chance—something out of which according to the probabilities of business or to the known course of practical experience, a rational expectation of profit arises [Per Braund J., in *Lala Indra Sen, In re*, (1940) 8 ITR 187, 220-21 (All)]. It is an antonym for “regular” in the sense that something happens at uncertain times [*CIT v. Sham Lal Narula*, (1963) 50 ITR 513, 529 (Pun)]. The word

“casual” may have several meanings. It may be something which comes in at uncertain times and something which cannot be relied upon or calculated to produce income or it may be something which is the result of chance, or the result of fortuitous circumstance [Per Manchanda J., in *B. Malick v. CIT*, (1968) 67 ITR 616, 628 (All)]. The word “casual” means “accidental, irregular, undesigned, unmethodical, careless, etc.” [*National Tobacco Co. of India Ltd. v. CIT*, (1967) 64 ITR 506, 514 (Cal)].

The word “non-recurring” does not mean that it has, as a matter of accident or as a matter of fact, recurred, but that there was no claim or right in the assessee to expect its recurrence [Per Malik J., in *Rani Amrit Kunwar v. CIT*, (1946) 14 ITR 561, 591 (All)]. Merely because the mode of payment is one that would ensure to the assessee receipt of the amount in dribblets, it would not necessarily characterise the receipt as a recurring receipt [*Mehboob Productions P. Ltd. v. CIT*, (1977) 106 ITR 758, 789 (Bom)]. But the idea of non-recurring is incompatible with the interest on monies deposited with a bank in an interest-carrying account [*India Carbon Ltd. v. CIT*, (1976) 102 ITR 797 (Gauh)]. The word “recurring” connotes the idea of repetition and of occurring more than once [Per Iqbal Ahmad J., in *Lala Indra Sen, In re*, (1940) 8 ITR 187, 200 (All)]. It does not imply incapability or impossibility of recurrence [*CIT v. Sham Lal Narula*, (1963) 50 ITR 513, 529 (Punj)]. For instance, “non-recurring” does not imply that, if a person makes more than one successful bet or gamble in his life, the receipt from such gambling including the first is of a recurring nature. The very nature of a receipt from a gambling transaction should show that a successful gambling which brings in a receipt of money, even a repeated number of times, will not make the receipts from such gambling transactions receipts of a recurring nature [see, *Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 678 (Mad)]. In *Chunni Lal Kalyan Das, In re* [(1925) ILR 47 All 368], the word “non-recurring” seems to have been construed to imply impossibility of recurrence.

Windfall.—Where the obtaining of a particular advantage or receipt cannot be said to be within the ordinary contemplation of the recipient, then only would it be proper to characterise the advantage or receipt as a windfall. On the other hand, where there was clear expectation, though small, of receiving an advantage or profit, then it cannot be properly regarded as windfall merely because the advantage or receipt is much more than could have been reasonably contemplated. It is the consciousness of the effort made which invests the receipt with the character of a return and removes it from the category of a windfall [*Mehboob Productions P. Ltd. v. CIT*, (1977) 106 ITR 758, 779-80 (Bom)]. The decision in *Mehboob's* case [(1977) 106 ITR 758 (Bom)] has been **dissented from** in *CIT v. Sahney Steel & Press Works Ltd.* [(1985) 152 ITR 39, 57 (AP), **on appeal**, (1997) 228 ITR 253 (SC)].

In the facts of *CIT v. Stewarts & Lloyds of India Ltd.* [(1987) 165 ITR 416 (Cal)], the payment received by the assessee from the foreign company was held to be a casual receipt in the nature of a windfall as the payment was not attributable to any legal obligation or custom or past practice or tradition.

In the facts of *Princess Maheshwari Devi of Pratapgarh v. CIT* [(1984) 147 ITR 258 (Bom)], the payments by way of monthly alimony received by the wife were held not to be windfalls or casual payments.

Tests for determination.—The word ‘casual’ in this section can only be applied to “accidental or fortuitous receipts; occurring without stipulation, contract, calculation or design”. It must be in the nature of an unforeseen windfall, like the finding of an article of value, or money won in a bet, and the getting of an unexpected gift or legacy [*CIT v. V.P. Rao*, (1950) 18 ITR 825, 838, 839 (Mad)]. The test of casualness of a receipt is not only that it must be of a non-recurring nature, but it must also be casual; the receipt must be fortuitous in the sense that it is not anticipated or foreseen. Another test is to see whether the receipt depends upon the caprice or whim of the person who pays the amount which constitutes the receipt in the hands of the assessee [*Surat District Cotton Dealers' Association v. CIT*, (1959) 35 ITR 121, 131 (Bom)]. The mere fact that certain donations have recurred in some years is not sufficient to characterise them as “recurring receipts”. In order that a receipt may be a “recurring receipt” there must be a claim or right in the assessee to expect its recurrence.

A *voluntary gift* depending entirely upon the goodwill of the donor does not cease to be of a “casual and non-recurring nature” by reason merely of the fact that the gift is repeated [*Rev. Father Prior, Sacred Heart's Monastery v. ITO*, (1956) 30 ITR 451 (Tra-Co.)]. Also see, *Rani Amrit Kunwar v. CIT*, (1946) 14 ITR 561, 591 (All)].

A single transaction or one out of two transactions cannot by the mere fact of its singularity or rarity alone be regarded as “casual” or “non-recurring”. It is at best a circumstance but not decisive [*Ram Kumar Agarwalla & Bros. v. CIT*, (1964) 52 ITR 82, 93 (Cal), **affirmed**, (1967) 63 ITR 622 (SC)]. There is no absolute rule that a receipt, in order to be income, must always be of a recurrent nature. Income has an infinite variety of forms and a single receipt may be ‘income’. Recurrence, again, is a matter of degree [*Maharajadhiraja of Darbhanga v. C. Ag. IT*, (1952) 21 ITR 258, 276 (Cal)]. A receipt cannot be said to be of a “casual” and non-recurring nature” unless it is produced by chance or is accidental, fortuitous or from unforeseen sources of income [see, *Chhatrasinhji Kesarisinhji Thakore v. CIT*, (1966) 59 ITR 562, 569 (SC)]. The success of a horse in a race or that of a bet is obviously uncertain and wholly a matter of chance, and the receipts dependent on such a chance

can never be anything but casual [*Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 677 (Mad)]. The mere fact that the payment came within the realm of expectation and was then offered and accepted and finally paid would not make the payment a receipt in pursuance of some plan or design so as to make it a non-casual receipt [Per Beg J., in *B. Malick v. CIT*, (1968) 67 ITR 616, 632 (All)]. Similarly, the fact that the amount paid to the assessee was not allowed as a permissible deduction in the tax-payer's assessment to income-tax, could not determine the character of the receipt in the hands of the recipient assessee [*C. Lakshmi Rajyam v. CIT*, (1960) 40 ITR 340 (Mad)]. Merely because there was, though not at the inception, but at a later stage, an understanding for the payment of a certain amount, the receipt does not become of a casual nature [Per Manchanda J., in *B. Malick v. CIT*, (1968) 67 ITR 616, 628 (All)]. One of the tests which has been laid down in some cases is whether the receipt is one which is foreseen, known and anticipated and provided for by agreement. If it is a result thereof, then it cannot be described as casual even if it is not likely to recur for a considerable time. This test is of a broad and sweeping nature and is not to be adhered to in each and every case [see, *Ramanathan Chettiar v. CIT*, (1967) 63 ITR 458, 464 (SC); Per Manchanda J., in *B. Malick v. CIT*, (1968) 67 ITR 616, 628 (All)].

Each case to be decided on its particular facts.—There can be no rule laid down with regard to what is of a casual and non-recurring nature. Each case must be decided on its particular facts [*CIT v. M. Ahmed Badsha Saheb*, (1943) 11 ITR 590, 597 (Mad)].

In the context of claiming exemption under section 10(3), not only questions of fact but also questions of law may arise [see, *CIT v. Smt. Kamla Devi Khajanchi*, (1986) 157 ITR 367 (Raj)].

Betting and horse-racing.—*What is a bet?*—“What is a bet? A bet is merely an irrational agreement that one person should pay another person something on the happening of an event. A agrees to pay B something if C's horse runs quicker than D's or if a coin comes one side up rather than the other side up. There is no relevance at all between the event and the acquisition of property. The event does not produce it at all. It rests, as I say, on a mere irrational agreement” [Per Rowlatt, J., in *Graham v. Green*, (1925) 2 KB 37 = 9 Tax Cas. 309, 312].

“When a person places a bet and loses it, that money is gone; if he wins the bet he gets his own money *plus* what the other party has lost as his bet; in neither case can the placing of a bet be equated to an investment or even an expenditure to produce an income or receipt” [Per Rajagopalan J., in *Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 672 (Mad)].

Receipts from betting and horse-racing—nature of—casual and non recurring.—The success of a horse or that of a bet is obviously uncertain and wholly a matter of chance, and the receipts dependent on such a chance can never be anything but casual. Whether a person made Rs. 40,000 over one bet or over a series of bets in a year can make no difference. The total would still be a total of casual receipts. The word “non-recurring” does not imply that, if a person makes more than one successful bet or gamble in his life, the receipt from each such gambling including the first is of a recurring nature. Receipts even from habitual betting are non-recurring receipts which fall within the scope of the exemption for which section 4(3)(vii) of the 1922 Act provides [see, *Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 677, 678 (Mad); Also see, *Lala Indra Sen, In re*, (1940) 8 ITR 187, 220, 221 (All); *Shaik Ibrahim v. CIT*, (1968) 69 ITR 117 (AP); *CIT v. S.S. Thiagarajan*, (1981) 129 ITR 115 (Mad); *N.K. Agarwal v. CIT*, (1980) 124 ITR 371 (Cal)].

Where the assessee claimed exemption on the ground that a particular income was from horse-racing but could not prove the fact by producing evidence in that behalf, exemption was not granted [see, *V.P. Samtani v. CIT*, (1981) 132 ITR 488 (Cal); *B.C. Paul v. CIT*, (1982) 136 ITR 395 (Cal)].

Betting and horse-racing activities—whether constitute business?—A business postulates activities on a commercially organised basis. Even an adventure in the nature of a trade needs such commercial organisation and activities. *Prima facie* at least, gambling by betting on horses cannot be viewed as a business, though a person indulges in it habitually and even makes money by it. Strong evidence would be needed to establish that racing and betting activities constituted a business or one of the lines of business of a person. Neither the hope to win his bet nor the actual realisation of that hope by a habitual gambler can suffice to divest the gambling transaction of its irrationality. A habitual indulgence in such irrational activities cannot be viewed as constituting a profession or vocation. Even if the money made over such transactions furnished the sole or main means of livelihood, that would not establish that gambling was a profession or vocation [see, *Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 673, 674, 675 (Mad). Also see, *Lala Indra Sen, In re*, (1940) 8 ITR 187 (All); *Shaik Ibrahim v. CIT*, (1968) 69 ITR 117, 128 (AP); *Addl. CIT v. L. Shamsundar*, (1980) 126 ITR 543 (Karn)].

Betting on New York cotton rates.—Winning or losing in betting on New York cotton rates does not depend upon any skill or enterprise, much less on any organised skill or activity, but is mere gambling and guess work, and though it brings periodic income or periodic losses, it is not “business” and receipts therefrom are exempt as casual and non-recurring [*Shaik Ibrahim v. CIT*, (1968) 69 ITR 117 (AP)].

Prizes won at lotteries.—Winning a prize at lotteries is wholly dependent on chance. If a person wins a prize in a lottery, that transaction is never likely to recur. In another lottery the same person may win another prize. It is not recurrence either of the transaction, or even of a receipt of the prize. The income, in each case, is casual and exempt from tax [see, *Janab A. Syed Jalal Sahib v. CIT*, (1960) 39 ITR 660, 678 (Mad); *Lala Indra Sen, In re*, (1940) 8 ITR 187 (All)]. In *CIT v. Sardarilal Mehra* [(1973) 87 ITR 47 (Punj)], A became a member of two lucky schemes. Each member was required to pay Rs. 100 towards each scheme each month to the sponsors for fifty months. A monthly “draw” was held and the person whose luck favoured was to be paid Rs. 6,000 and was further entitled to stop his monthly contributions. Non-drawing members were entitled to get back Rs. 6,000 each at the end of sixty-month period. A “drew” and was entitled to Rs. 10,900. The department considered this to be A’s business income. Held, the amount “drawn” was a casual and non-recurring income and was not taxable.

Voluntary payment and its taxability.—Voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation, may constitute “income” although, if the payments were not made the enforcement thereof could not be insisted upon. These payments constitute “income” because they are referable to a definite source, which is the office, profession, vocation or occupation. In other words, such voluntary payments are taxable which have an origin in the office, profession or vocation of the payee, which constitutes a definite source for the income. What is taxed under the Act is income from every source, barring the exception provided in the Act itself. Where, however, a voluntary payment is made entirely without consideration and is not traceable to any source, which a practical man may regard as a real source of his income, but depends entirely on the whim of the donor, it cannot fall in the category of “income” [*H.H. Maharani of Morvi v. CIT*, (1963) 49 ITR 594, 605 (Bom). Also see, *Rani Amrit Kunwar v. CIT*, (1946) 14 ITR 561 (All); *Smt. Dhirajben R. Amin v. CIT*, (1968) 70 ITR 194 (Guj)].

In *CIT v. Beldih Club* [(1986) 161 ITR 861 (Pat)], a donation of Rs. 50,000 was given to the assessee club by TISCO for major repairs and renovation of its building, etc. It was held that the donation was a casual receipt in the hands of the club of a non-recurring nature.

A payment may be liable to income-tax although it is voluntary on the part of the person who made it, and the test is whether, from the stand-point of the person receiving it, it accrues to him by virtue of his office. The fact that whether there was, or there was not, a legal obligation on the part of the person paying the money is not very much relevant [*P. Krishna Menon v. CIT*, (1959) 35 ITR 48, 53-54 (SC)]. The tip given to a taxi-driver is in one sense a gift, but a particular tip may be somewhat above what would normally be expected by the taxi-driver and may reflect a bountiful impulse. Yet all tips, including the bountifuls, must be regarded as taxi-driver’s income unless, of course, payments which have the attributes of being a personal gift [*Bridges v. Hewitt*, (1958) 33 ITR 885, 906 (CA)].

Exceptions to exemption.—*Capital gains—sub-clause (i).*—The subject of tax on capital gains has been dealt with under sections 45 to 55A, *post*. When the law did not have a provision for taxing capital gains, the question of casualness arose for consideration in cases of such receipts. Since capital gains have been brought under the net of taxation, such receipts have been specifically excluded from the scope of casual receipts.

If any amount of capital gain is not taxable as capital gain for any reason, that amount cannot be treated as a casual and non-recurring receipt under section 10(3) [*B.K. Roy Pvt. Ltd. v. CIT*, (1995) 211 ITR 500, 504 (Cal) **dissenting from** *CIT v. Gulab Chand*, (1991) 192 ITR 495 (All)].

The above Calcutta view [211 ITR 500, 504 (Cal)] has been **followed in** *Cadell Weaving Mill Co. P. Ltd. v. CIT* [(2001) 249 ITR 265, 287 (Bom), special leave petition granted by the Supreme Court : (2004) 266 ITR (St.) 101 (SC)]. Also see, *CIT v. Magnum Export (P.) Ltd.*, (2003) 262 ITR 10, 14-15 (Cal). The Calcutta decision [211 ITR 500 (Cal)] has been **affirmed in** *CIT v. B.K. Roy Pvt. Ltd.* [(2001) 248 ITR 245 (Cal)].

Following *Cadell Weaving Mill Co. P. Ltd. v. CIT* [(2001) 249 ITR 265 (Bom)], there can be no manner of doubt that what is in the nature of capital receipt cannot be sought to be brought to tax by resorting to section 10(3) read with section 56 [*Girish Bansal v. UOI*, (2016) 384 ITR 161, 177 (Del)].

Occasional receipts arising in the course of business or profession—sub-clause (ii).—This sub-clause clearly provides that any receipts, even if they are of casual or non-recurring nature, arising from business or the exercise of a profession or occupation, shall not enjoy exemption and be included in the total income. It is thus clear that even a casual receipt arising from trade or from an adventure in the nature of trade should be regarded as income assessable to tax [*Bisheswar Singh v. CIT*, (1955) 27 ITR 376 (Pat)]. The fact that in the course of carrying on the business, an amount is received which could be turned into capital does not in any way militate against the same amount being considered to be revenue receipt [*Kesoram Industries & Cotton Mills Ltd. v. CIT*, (1978) 115 ITR 143 (Cal)].

In order that a receipt may not be taxable in view of section 10(3), the receipt should not only have been casual and non-recurring but it should not have been a ‘receipt arising from business’. To put in the other way, if an income arose in the usual course of business, then it would not have been liable for exclusion even if it was

casual and non-recurring in nature. The word 'from' means 'out of'. The income should have accrued out of the business carried on by the assessee [*Universal Radiators v. CIT*, (1993) 201 ITR 800, 805, 807 (SC)]. In that view of the matter, where payment is made to compensate for loss of the use of any goods in which the assessee does not carry on any business or the payment is a just equivalent of the cost incurred by the assessee, but excess accrues due to fortuitous circumstances or is a windfall, then the accrual may be a receipt, but it would not be income arising from business, and, therefore, not taxable under the Act [*Universal Radiators v. CIT*, (1993) 201 ITR 800, 808-09 (SC)].

The test for determining whether casual and non-recurring receipts are mere gifts or windfalls which are not income or income from the profession or vocation of the assessee, is *firstly*, whether the payment is connected with the exercise of the assessee's profession or vocation and *secondly*, whether, if it is so connected, it is made merely in appreciation of the personal qualities of the assessee displayed in the course of his engagement or is intended to confer a special benefit on him with respect to the services rendered so as to increase his earnings in the exercise of his profession [*David Mitchell v. CIT*, (1956) 30 ITR 701 (Cal); *CIT v. K.R. Honnappa*, (1989) 180 ITR 660, 663 (Karn)]. In this view of the matter, the amounts received by the assessee, a priest in a monastery, for performing the masses or to have the masses performed by other priests were held to be referable to the occupation or vocation of the assessee and the surplus which remained with the assessee out of the mass stipends received by him was held to constitute his income [*Father Epharam v. CIT*, (1989) 176 ITR 78 (Ker)].

Merely because an assessee carries on a vocation, there is no presumption in law that any amount received by him is income subject to tax. The test in such cases is to find out if the sum is paid to the assessee in respect of his services and accrues to him by virtue of his office. Where an amount is paid to a person as a personal gift for his personal qualities and as a token of personal esteem and veneration, it cannot be subjected to tax as income arising out of business, profession or vocation [*Dilip Kumar Roy v. CIT*, (1974) 94 ITR 1 (Bom). Also see, *Mahesh Anantrai Pattani v. CIT*, (1961) 41 ITR 481 (SC)]. Thus, where the foreign collaboration supplied machinery to the assessee and also sent free of cost "working-in-material" to facilitate expeditious starting of the working of the company, it was held that a gift of raw material or even *ex gratia* delivery of raw material free of cost could not be treated as income. The value of raw material in the case did not fall under any of the three heads of exceptions to receipt of a casual or non-recurring nature [*Groz-Beckert Saboo Ltd. v. CIT*, (1972) 86 ITR 256 (Punj), **affirmed on different grounds**, (1979) 116 ITR 125 (SC)].

Ordinarily, profits arising out of an isolated transaction outside the scope of a business do not fall to be chargeable with income-tax as business profits [*Virappa Chettiar v. CIT*, AIR 1930 Mad 123]. The element of periodical receipt or regularity or expected regularity of monetary return is an essential ingredient of business income [*Major A.U. John, In re*, (1938) 6 ITR 434 (All)].

A receipt arising from business, or the exercise of a profession, vocation or occupation will not come within the exception mentioned in section 4(3)(vii) of the 1922 Act. There is nothing in the words "exercise of" occurring in that clause for holding that the person exercising the occupation should be of that occupation already [*CIT v. V.P. Rao*, (1950) 18 ITR 825 (Mad)].

Exhaustion of capital by the working of mines, quarries and forests, howsoever, it might be treated on strict actuarial principles or on strict principles of economics, may for purposes of the levy of income-tax be treated as profits. A receipt of money which is known, foreseen, anticipated and worked for in the course of carrying on a business is not a casual income within the meaning of these provisions [*Fringford Estates Ltd. v. CIT*, (1951) 20 ITR 385 (Mad)].

In *CIT v. Bikram Singh Sood* [(2001) 249 ITR 454, 455-56 (Del)], the assessee, an authorised agent for selling lottery tickets, got a sum of Rs. 1,18,929 being his share for the percentage of the first prize money which was obtained by a person who had bought a ticket from the assessee. On the question of taxability of such amount it has been held that the conditions of the lottery indicated as to the percentage which an authorised agent, like the assessee, would receive. The amount was received by the assessee as a part of the business activities and that itself did not carry any element of chance. Such amount was not a casual and non-recurring receipt but the same was taxable in the hands of the assessee.

In *Boeing v. CIT* [(2001) 250 ITR 667, 672 (Mad)], the assessee, who was a dealer in cloth, received a sum of Rs. 50,000 as cash equivalent of value of an ambassador car as a gift from a company under a gift scheme formulated in the company's centenary year for having purchased suitings worth more than Rs. 8 lakhs from the company. On the question of taxability of the sum of Rs. 50,000 it has been held that the receipt was clearly a trading receipt and the same was not a casual and non-recurring receipt.

Compensation.—Prior to 1-4-1955, when compensation or other payment in connection with termination or variation of or in the agreement for any managing agency, etc., came to be included, under section 10(5A) of the 1922 Act, within business income and the amount of any compensation due to or received by an employee at or in connection with the termination of his employment came to be included, under *Explanation 2(i)* to section 7(1) of 1922 Act, in 'Salary income', the question whether or not a compensation received did amount to a

casual or non-recurring receipt was very important and often contended because of the fact that although casual receipts excluded business income and salary income, such types of receipts were, prior to 1-4-1955, not to be treated as business income or salary income. Leading cases on that state of law decided that compensation for requisition of a building [*Associated Oil Mills Ltd. v. CIT*, (1960) 40 ITR 118 (Mad)], and damages for wrongful detention of movable properties [*CIT v. Rani Prayag Kumari Debi*, (1940) 8 ITR 25 (Pat)] were of a casual and non-recurring nature, and therefore exempt from tax. On the other hand, interim maintenance allowance to a Jagirdar pending determination of compensation on abolition of Jagirs [*Raja Rameshwara Rao v. CIT*, (1963) 49 ITR (SC) 144] was held to be non-casual; and compensation for compulsory acquisition of the taxpayer's business place [*CIT/EPT v. Shamsher Printing Press*, (1960) 39 ITR 90 (SC)] was business income, and that for compulsory retirement from service paid on the basis of a percentage of salary [*CIT v. R. Panchapakesa Ayyar*, AIR 1932 Mad 424] was assessable under the head 'Salary', and these did not enjoy exemption. Where it was found that a sum ostensibly paid as compensation for termination of managing agency was factually a collusive device, the same could not be treated as exempt [*Juggilal Kamalapat v. CIT*, (1963) 49 ITR 458 (All)].

Since business income and salary income have included such compensation receipts within their fold and capital gains have been brought under the net of taxation, the principles discussed in those and other similar cases are of no more application.

Grant-in-aid received prior to commencement of business.—Before the State Trading Corporation, a Government of India undertaking, could start its trading activity in July, 1957, the Government of India, on 18-5-1956, sanctioned a sum of Rs. 2,00,000 "as grant-in-aid" to enable the Corporation to meet the expenditure in connection with its administration. The department treated this as the Corporation's income in its first assessment for assessment year 1958-59. Held, since the receipt was one before the commencement of the business, it could not be treated as business income. The receipt was also exempt from taxation being a casual and non-recurring receipt [*CIT v. State Trading Corporation of India Ltd.*, (1973) 92 ITR 294 (Del)].

Donations for running newspaper.—Teaching religion can be an occupation and it is unnecessary that an occupation must have for its object the earning of a livelihood. Anything in which a person is engaged systematically can be an occupation or a vocation. Thus, where donations were received by the assessee for continuing a newspaper and propagating religious faith, it was held that there was nothing personal in the gifts and the donors were interested in the assessee continuing to exercise his vocation. Therefore, the receipts from donations arose from the exercise of an occupation by the assessee and excluded from the ambit of these provisions [*CIT v. Dr. K. George Thomas*, (1974) 97 ITR 111 (Ker), **affirmed in**, *Dr. K. George Thomas v. CIT*, (1985) 156 ITR 412 (SC); *CIT v. Dr. K. George Thomas*, (1977) 108 ITR 1024 (Ker), **affirmed in**, *Dr. K. George Thomas v. CIT*, (1986) 159 ITR 851 (SC)].

Receipts by way of addition to the remuneration of an employee—sub-clause (iii).—Sub-clause (iii) excepts out such receipts from the scope of the exemption under section 10(3). In fact, such receipts have all along been included in the scope of salary taxable under section 15.

Voluntary payments to employees, etc.—An emolument or perquisite may be paid to an employee under a contract; it is also possible to conceive of cases where there may be customary presents attached to an employment. An employer may also remunerate the services of an employee by a voluntary gift either because there are no emoluments attached to the employment, or because he wants to give him something over and above his contractual remuneration. In all such cases, the amounts received will be the income of the profession or vocation of the employee. It is also possible that an employee may get gift from his master, without it being intended as additional remuneration to the employee, though it might be that what induced the gift was the loyal services of the latter. It cannot be said that, in such a case, what was given was remuneration for the service.

Where a payment is not gratuitous, but made under a contract for remunerating the services, there would be no doubt about the nature of the receipt. But where the payment made to an employee was purely voluntary and gratuitous, the question would arise whether it was intended as an addition to his remuneration or whether it was purely a testimonial gift for his past services, that is, a gift of money represented as a mark of esteem or acknowledgement of his services. In the latter case the amount will not be liable to tax [*C. Lakshmi Rajyam v. CIT*, (1960) 40 ITR 340, 344 (Mad)].

The test of liability to tax on a voluntary payment made to the holder of an office or employment is (1) whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office or employment, that is, by way of remuneration for his services; (2) that if the recipient's contract of employment entitles him to receive the voluntary payment, whatever it may amount to, that is a strong ground for holding that, from the standpoint of the recipient, it accrues to him by virtue of his employment, or by way of remuneration for his services; (3) that the fact that the voluntary payment is of a periodic or recurrent character affords a further, but less cogent, ground for the same conclusion; (4) that, on the other hand, if a voluntary payment is made in circumstances which show that it is given by way of present or testimonial on grounds personal to the recipient, the proper conclusion is likely to be that the voluntary payment is not a profit accruing

to the recipient by virtue of his office or employment but a gift to him as an individual, paid and received by reason of his personal needs or by reason of his personal qualities [*Moorhouse v. Dooland*, (1955) 28 ITR 86 (CA)].

Where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office and is includible in his total income. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of a particular clergyman, it might not have been a voluntary payment for services, but a mere present [Per Lord Loreburn L.C, in *Cooper v. Blakiston*, (1909) 5 Tax Cas 343]. The test is supplied by asking: is the payment in question in the end a personal gift or is it remuneration? If the former, it is not liable to inclusion, if the latter, it is liable to be included in the total income [Per Viscount Cave, in *Reed v. Seymour*, (1927) 11 Tax Cas 625]. In other words, the test is supplied by considering whether, from the standpoint of the person who receives an amount, it accrues to him by virtue of his office? If it does, it is includible in his total income irrespective of the fact whether it was voluntary or compulsory on the part of the person who paid it [Per Sir Richards Henn-Collins MR in *Herbert v. Mcquade*, (1902) 4 Tax Cas 489].

It may be remembered that a payment made at or after the termination of a service or an engagement entered into in the exercise of a profession does not, by such fact, prevent it from becoming an “income” in the hands of the recipient [*Hunter v. Dewhurst*, (1931) 16 Tax Cas 605, 653]. At the same time, if the payment is by way of an admiration for the employee or ex-employee in respect of the office held by him, it is not includible as his “remuneration” [Rowlatt J., in *Reed v. Seymour*, (1927) 11 Tax Cas 625]. Also see, *David Mitchell v. CIT*, (1956) 30 ITR 701 (Cal).

Illustrations, where the receipts were held to be casual income.—(1) A gift moved by the remembrance of past services already efficiently remunerated [*Beynon v. Thorpe*, 14 Tax Cas 1] or by way of expression of gratitude, not entitled by the terms of service [*Reed v. Seymour*, (1926) 11 Tax Cas 625] or by way of grounds personal to the recipient was held to be casual in nature. On the other hand, where such rewards or collections were part of the employment-agreement, the rewards were not casual [see, *Moorhouse v. Dooland*, (1955) 28 ITR 86 (CA)].

(2) There was no legal binding (but only an understanding) between the company and the assessee employee for payment of any gratuity on termination of the latter’s satisfactory service, a person influentially interested in the company voluntarily paid to the assessee a sum equal to the gratuity expected to be paid by the company: Held, the receipt did not represent ‘salary’ but was exempt as a casual and non-recurring receipt [*CIT v. R. Johnstone*, (1934) 2 ITR 390 (Rang)].

(3) Assessee, an employee of S, a sugar-factory owner—S decided to transfer the factory to a limited company—Assessee disposed of a large number of shares in the limited company—Directors of the company voluntarily allotted shares of the value of Rs. 15,000 in recognition of assessee’s services without there being any agreement or understanding therefor: Held, the receipt was in the nature of a windfall [*Mahammad Faruq, In re*, (1938) 6 ITR 1 (All)].

(4) Assessee acted as the Chief Dewan of Bhavnagar State from December, 1937, to January, 1948, when responsible Government was introduced in the State. On 22-1-1948, the Maharaja passed an order granting the assessee a pension of Rs. 2,000 per month equal to his salary. On 1-3-1948, Bhavnagar State merged in the United State of Saurashtra and the Maharaja ceased to be the ruler of that State. On 31-3-1950, the Maharaja directed his bankers to pay Rs. 5 lakhs to the assessee, which was paid on 12-6-1950. On 27-12-1950, the Maharaja instructed his bankers clarifying that the amount was paid as a gift in consideration of loyal and meritorious services rendered: Held, that the amount was paid to the assessee not in token of appreciation for his services but as a personal gift for the personal qualities of the assessee and as a token of personal esteem. The amount was, therefore, not taxable [*Mahesh Anantrai Pattani v. CIT*, (1961) 41 ITR 481 (SC)].

Other illustrations.—*Foreign cases.*—(1) A was employed as a secretary of the company and later, on liquidation, he acted as its liquidator. On completion of winding-up, 50% of surplus was given by the shareholders to A. Held, the receipts were not ‘income’ in respect of A’s employment [*Cowan v. Seymour*, (1920) 7 Tax Cas 372].

(2) Proceeds of a benefit cricket match organised for the purpose were ultimately received by a professional cricketer in the employment of a club. Held, that the receipt could not be held to be a profit accruing to him in respect of cricketer’s office of employment, but was in the nature of a personal gift, not assessable to tax [*Reed v. Seymour*, (1926) 11 Tax Cas 625 (HL)].

(3) Assessee in the employment of a company was mainly responsible for building up the company. Although expected, the principal shareholder did not make any gift or bequest in favour of the assessee. He, however, devised all his shares in the company by his will in favour of his wife and two sons. The sons felt that they were under a moral obligation to transfer some shares to the assessee and they did so. Held, shares

transferred were not acquired by the assessee as remuneration but merely as a testimonial [*Bridges v. Bearsley*, (1958) 33 ITR 653 (Ch D)].

(4) A payment voluntarily made could still be by way of remuneration for service: the test is whether from the standpoint of the person who receives it, it accrues to him in virtue of his office [*Herbert v. Mcquade*, (1902) 4 Tax Cas 489, 500].

(5) There was a widespread custom to make voluntary gifts to a huntsman at Christmas time and these were so made. Held, payments received by the huntsman were by virtue of his office as huntsman and therefore liable to tax [*Wright v. Boyce*, (1959) 36 ITR 504 (CA)].

(6) A professional cricketer was employed by a club on salary and expenses with a provision that collections shall be made for meritorious performances. Held, proceeds of collections were received by way of remuneration and were liable to tax. It was observed (at page 96):

"I observe only that the alternatives were intended to be mutually exclusive—if the sum in question was a mere personal gift, then, *ex-necessitate rei*, it was not received by way of earnings of the office or employment; and *vice versa* [*Moorhouse v. Dooland*, (1955) 28 ITR 86 (CA)].

(7) If payments received are profits of employment, it does not matter whether they do or do not come from the employer. In *Herbert v. Mcquade* [(1902) 2 KB 631 = 4 TC 489] the increment to the basic stipend came from outside the diocese, and in *Blakiston v. Cooper* [(1909) AC 104 = 5 TC 347] the Easter offerings were not received solely from the parishioners. There was no contractual right to the tips in *Calvert v. Wainright* [(1947) KB 526 = (1948) 16 ITR (Supp) 54 (KB)], but these were held to be taxable.

Also see, *Rogers v. Hadley*, (1863) 8 H. & C. 227; *Chibbett v. Robinson*, (1924) 9 TC 48; *Haythornthwait & Sons Ltd. v. Kelly*, (1927) 11 TC 657; *Charles Hunt Ltd. v. Palmer*, (1931) 2 Ch 287; *Henry v. Arthur Foster*, (1932) 16 TC 605; *Reade v. Bearley*, (1933) 17 TC 687; *Brocklesby v. Merricks*, (1934) 18 TC 575; *Allen v. Trehearne*, (1938) 2 KB 464 = 22 TC 15; *Tilley v. Wales*, (1943) AC 386 = 11 ITR (Supp) 69 = 25 TC 136; *Wilson v. Nicholson, Sons & Daniel Ltd.*, (1943) 2 All ER 732 = 25 TC 473; *Leeland v. Boarland*, (1946) 1 All ER 13 = 15 ITR (Supp) 118 (KBD); *Turner v. Forwood*, (1951) All ER 746; *Stainer's Executors v. Purchase*, (1952) AC 280; *Heasman v. Jordan*, (1954) All ER 101 = 35 TC 518; *Edwards v. Bairstow*, (1956) AC 14.

Indian Cases.—(1) Assessee, an actress, creditably performed as heroine in a motion picture produced by a firm constituted of R and S having 50:50 share—Picture released in December, 1950, with great success—On 5-5-1951, R voluntarily and gratuitously agreed in writing to pay the assessee a quarter of his share of the realisation from the picture in consideration of the whole-hearted help, co-operation and valuable service rendered by her in respect of the production and completion of the picture: Held, the amount was taxable in her hands as the same accrued to her by virtue of her employment [*C. Lakshmi Rajyam v. CIT*, (1960) 40 ITR 340 (Mad)].

(2) On merger, the Government of India treated Dholpur House of Delhi as the property of the State of Rajasthan. The Government, however, paid 1/3rd of the rental value of the house, to the Ruler of the merged State of Dholpur, purely on an *ex gratia* measure. The payments were made from year to year for a number of years: Held, the amounts so received *ex gratia* were of a casual and non-recurring nature and exempt from tax [*H.H. Maharaja Rana Hemant Singhji v. CIT*, (1971) 79 ITR 83 (Raj)].

(3) One D was claiming Rs. 3,25,000 from a company F and threatened litigation. F expressed its willingness to pay to D Rs. 2,25,000 to avoid litigation, a fact known to the assessee A, a chartered accountant. A took an assignment from D of latter's claim on payment to D of a sum of Rs. 1,25,000 and, later, transferred this right to F for a sum of Rs. 2,10,000, thus making a profit of Rs. 85,000. Rejecting A's claim that the income was casual and non-recurring, it was held that A had, in fact, embarked on a venture with a view to make profit and the profit made by him was not casual [*P.D. Ghanekar v. CIT*, (1971) 80 ITR 236 (Bom)].

(4) A husband and his wife, not on cordial terms, agreed in writing to live apart on the husband agreeing to pay Rs. 2,000 per month to the wife for the maintenance of herself and their two children till she marries again. It was held that the monthly allowance was the wife's income but could not be taxed in entirety in her hands. She received it also to maintain two minor children, so only a proportionate part could be taxed in her hands. Wife's contention that the income was casual and non-recurring was negated as the amounts were receivable with regularity under an agreement which could be enforced [*CIT v. Smt. Shanti Meattle*, (1973) 90 ITR 385 (All)].

Further, in the following cases, on facts, the receipt was held to be casual and non-recurring:—

1. *Virappa Chettiar v. CIT*, AIR 1930 Mad 123.
2. *Major A.U. John, In re*, (1938) 6 ITR 434 (All).
3. *CIT v. M. Ahmad Badsha Saheb*, (1943) 11 ITR 590 (Mad), distinguished in *CIT v. V.P. Rao*, (1950) 18 ITR 825 (Mad) and relied on in *B. Malick v. CIT*, (1968) 67 ITR 616 (All).
4. *Kahan Chand & Kishan Chand v. CIT*, (1944) 12 ITR 472 (Lah).

5. *Raja Jagadish Pratap v. State*, (1958) 34 ITR 426 (All).
6. *Gappumal Kanhaiyalal v. CIT*, (1961) 43 ITR 46 (All).
7. *B. Malick v. CIT*, (1968) 67 ITR 616 (All).
8. *CIT v. Dr. P.N. Beh*, (1972) 84 ITR 125 (Del).
9. *CIT v. Union Engineering Works*, (1976) 105 ITR 311 (Ker).
10. *Addl CIT v. B.N. Bhagi & Bros.*, (1977) 106 ITR 359 (All).
11. *Mehboob Productions P. Ltd. v. CIT*, (1977) 106 ITR 758 (Bom).
12. *CIT v. M. Ramalakshmi Reddy*, (1981) 131 ITR 415 (Mad), **distinguished in** *M. Ramalakshmi Reddi v. CIT*, (1998) 232 ITR 281, 288-89 (Mad).
13. *Siddhartha Publications (P) Ltd. v. CIT*, (1981) 129 ITR 603 (Del).
14. *CIT v. Sarbamangala Devi*, (1987) 163 ITR 898 (Pat).
15. *CIT v. P.R. Chakarvarty*, (1987) 165 ITR 345 (Pat).
16. *CIT v. Smt. Sarbamangala Devi*, (1987) 165 ITR 346 (Pat).
17. *CIT v. J.C. Wahal*, (1988) 170 ITR 635 (All).
18. *CIT v. Moti Chand Khajanchi*, (1988) 171 ITR 280 (Raj), special leave petition dismissed by the Supreme Court: (1988) 171 ITR (St.) 49 (SC).
19. *CIT v. M. Balamuralikrishna*, (1988) 171 ITR 447 (Mad).
20. *CIT v. Chiranjilal Multani Mal Rai Bahadur (P.) Ltd.*, (1989) 179 ITR 157 (Punj).
21. *CIT v. Gulab Chand*, (1991) 192 ITR 495 (All), **dissented from in** *B.K. Roy Pvt. Ltd. v. CIT*, (1995) 211 ITR 500, 504, 505 (Cal), **affirmed in** *CIT v. B.K. Roy Pvt. Ltd.*, (2001) 248 ITR 245 (Cal) (amount received by way of consideration for surrendering the tenancy rights).
22. *Universal Radiators v. CIT*, (1993) 201 ITR 800, 807 (SC) (devaluation surplus arising out of payment paid for loss of ingots to an assessee manufacturing radiators for automobiles).
23. *CIT v. A.S. Wardekar*, (2006) 283 ITR 432 (Cal) (where the income cannot be charged under section 45 because of the inapplicability of the computation provided under section 48, it could not be taxed as a casual or non-recurring receipt under section 10(3) read with section 56).

On the other hand, in the following cases, on facts, the receipt was held not to enjoy the exemption:—

1. *S.R.M.S. Subrahmanyam Chettiar v. CIT*, (1934) 2 ITR 295 (Mad).
2. *Gayaprasad and Chotey Lal, In re*, (1935) 3 ITR 177 (All).
3. *Thakar Datt Sarma v. CIT*, (1939) 7 ITR 154 (Lah).
4. *K.H. Mody, In re*, (1940) 8 ITR 179 (Bom).
5. *Sushil C. Sen, In re*, (1941) 9 ITR 261 (Cal).
6. *CIT v. V.P. Rao*, (1950) 18 ITR 825 (Mad), **dissented from in** *B. Malick v. CIT*, (1968) 67 ITR 616 (All).
7. *Fringford Estates Ltd. v. CIT*, (1951) 20 ITR 385 (Mad).
8. *Bisheswar Singh v. CIT*, (1955) 27 ITR 376 (Pat).
9. *David Mitchell v. CIT*, (1956) 30 ITR 701 (Cal).
10. *Ratna Sugar Mills Co. Ltd. v. CIT*, (1958) 33 ITR 644 (All).
11. *Parelkar, Gore and Parpia v. CIT*, (1958) 34 ITR 312 (Bom).
12. *P. Krishna Menon v. CIT*, (1959) 35 ITR 48 (SC).
13. *Surangmali Punamchand Surana v. CIT*, (1960) 40 ITR 360 (Assam).
14. *Seshasayee Bros. Ltd. v. CIT*, (1961) 42 ITR 568 (Mad).
15. *Maheshwari Devi Jute Mills Ltd. v. CIT*, (1961) 43 ITR 254 (All), **affirmed**, (1965) 57 ITR 36 (SC).
16. *Haji Hamed Haji Abdulla v. CIT*, (1961) 43 ITR 599 (Cal).
17. *Hindustan Aircraft Ltd. v. CIT*, (1963) 49 ITR 471 (Mys).
18. *Nabadwip Chandra Roy v. CIT*, (1962) 44 ITR 591 (Assam).
19. *C. Rajagopalachariar v. CIT*, (1963) 50 ITR 196 (Mad).
20. *CIT v. Bhaidas Cursonadas & Co.*, (1963) 50 ITR 429 (Bom).
21. *Ram Kumar Agarwalla & Bors. v. CIT*, (1964) 52 ITR 82 (Cal), **affirmed**, (1967) 63 ITR 622 (SC).
22. *Rukmani Co. (P) Ltd. v. CIT*, (1964) 52 ITR 599 (Mad).
23. *Ramanathan Chettiar v. CIT*, (1967) 63 ITR 458 (SC).
24. *CIT v. P.N. Nagaraj*, (1976) 102 ITR 83 (Mad).

25. *India Carbon Ltd. v. CIT*, (1976) 102 ITR 797 (Gauh).
26. *CIT v. Keshri Singh*, (1977) 106 ITR 184 (Raj).
27. *Dhrangdhra Chemical Works Ltd. v. CIT*, (1977) 106 ITR 473 (Bom).
28. *Ghulam Hassan Sheikh v. CIT*, (1977) 109 ITR 551 (J&K).
29. *CIT v. Ram Parshad*, (1978) 113 ITR 462 (Del).
30. *K. Sankaran v. CIT*, (1978) 115 ITR 561 (Ker).
31. *S.G.R. Subramania Iyer v. CIT*, (1979) 116 ITR 746 (Mad).
32. *Mysore Sales International Ltd. v. CIT*, (1979) 117 ITR 64 (Karn).
33. *Garhwal Motor Owners Union Ltd. v. CIT*, (1980) 122 ITR 417 (All).
34. *Sree Hanuman Trading Co. v. CIT*, (1980) 125 ITR 1 (Ker).
35. *CIT v. Dr. Chinna Oomen*, (1984) 150 ITR 583 (Mad).
36. *Ganesh Flour Mills Co. Ltd. v. CIT*, (1985) 156 ITR 179 (Del).
37. *Hindustan Trading Corpn. v. CIT*, (1986) 160 ITR 15 (Guj).
38. *N.A. Mody v. CIT*, (1986) 162 ITR 420 (Bom).
39. *K. Ramaswami Gounder v. CIT*, (1987) 163 ITR 94 (Mad).
40. *Udaipur Mineral Development Syndicate (P.) Ltd. v. CIT*, (1988) 173 ITR 431 (Raj).
41. *CIT v. Kamani Metals and Alloys Ltd.*, (1990) 183 ITR 327 (Bom).
42. *Khandelwal Ferro Alloys Ltd. v. CIT*, (1990) 186 ITR 111 (Bom).
43. *Asiatic Oxygen Ltd. v. CIT*, (1991) 189 ITR 483 (Cal) (interest received by the assessee-company on unpaid calls from the shareholders).
44. *CIT v. Mineral Mining Co. Pvt. Ltd.*, (1992) 194 ITR 258 (Mad) (the receipt having its origin in the agreement which came into being in furtherance of the business activities of the assessee).
45. *Kailash Nath Gupta v. CIT*, (1992) 198 ITR 695 (All) (bonus received on sale of lottery tickets).
46. *CIT v. J.H. Tarapore*, (2002) 257 ITR 305, 322-23 (Mad).

In *S.K. Dey v. CIT* [(2002) 255 ITR 270, 272 (Del)], it has been found that the receipt of the sum of Rs. 1,050 by the assessee for articles written by him was not a casual and non-recurring receipt and the same was taxable because the assessee had many articles in the press to his credit. Such a finding was held to be essentially one of fact giving rise to no question of law.

Departmental circular.—The following departmental circular is relevant:—

The Soviet Land Nehru Award—Institution of prizes for the best literary and journalistic works—Exemption from Income-tax.—“The Soviet Land Nehru Award Committee, of which the Prime Minister Smt. Indira Gandhi, is the Patron, has instituted certain prizes which are awarded annually for the best literary and journalistic works, tending to promote the cause of Indo-Soviet friendship and peace. These prizes have been instituted in memory of Shri Jawaharlal Nehru and are awarded on the anniversary of his birthday. These awards were made for the first time in 1965.

2. The Board have decided that the Soviet Land Nehru Awards for the best literary and journalistic works are of the nature of casual receipts under section 10(3) of the Income-tax Act and should not be subjected to income-tax in the hands of the recipients.

3. It has also been decided that wherever these prizes have been taxed, action to modify the assessments may be taken so as to exclude the amount of the prize from the assessable income.” [Board's F. No. 24/42/66-IT(AI), dated 3-2-1966].

Remand to Tribunal.—Reference may be made to *Sheelaben M. Patel v. ITO* [(2007) 290 ITR 189 (Guj)].

CASUAL AND NON-RECURRING RECEIPTS—SECTION 10(3) [LAW FOR ASSESSMENT YEARS 1973-74 TO 2002-03]

Changes made.—The definition of income in section 2(24) was amended so as to include therein winnings from (i) lotteries, (ii) cross-word puzzles, (iii) races including horse races, (iv) card games and other games of any sort or (v) gambling or betting of any form or nature whatsoever. Winnings from lotteries were excluded from the scope of section 10(3) with the result that they became taxable under the provisions of the Act. Section 80TT (operative up to 31-3-1987) provided straight deduction in respect of winnings from lotteries in the case of non-corporate tax-payers. The exclusion of the “winnings from lotteries” from the scope of section 10(3) did not in any manner suggested that the other kinds of winnings were brought within the scope of taxation. It would be incongruous to infer a liability to tax from the language employed in a provision granting exemption [*CIT v. G.R. Karthikeyan*, (1980) 124 ITR 85, 93 (Mad)]. The decision in *CIT v. G.R. Karthikeyan* [(1980) 124 ITR 85 (Mad)] has been **reversed** by the Supreme Court in *CIT v. G.R. Karthikeyan* [(1993) 201 ITR 866 (SC)], where the

Supreme Court has held that prize received by the assessee in a car rally was income as defined in section 2(24), even though it was casual in nature.

Winnings under serials (ii) to (v) above, however, remained casual income. The jackpot winnings would come within the ambit of serials (ii) to (v) above [*CIT v. Lachmandas Veerbhandas*, (1981) 128 ITR 606, 609 (Karn), **affirmed in** *CIT v. Lachhman Das Veerabhandas*, (2001) 247 ITR 810 (SC); *M.A.A. Raoof v. ITO*, (1985) 152 ITR 228 (Mad)]. But a ceiling of Rs. 1,000 was laid for claiming exemption of any type of casual and non-recurring income. Such income in excess of Rs. 1,000 was to be included in the total income in the case of all categories of assesseees.

The exemption of the first Rs. 1,000 of income was, however, not to be available in respect of capital gains, receipts arising from business or exercise of profession, etc., or receipts by way of addition to remuneration of an employee. There is no change in law in regard to these three types of receipts.

These changes were made by **the Finance Act, 1972** (16 of 1972), with effect from 1-4-1972. However, it was specifically provided in section 59 of that Finance Act that income by way of casual and non-recurring receipts was to continue to be exempt from income-tax for the assessment year 1972-73 to the same extent as thitherto [*CIT v. Lachmandas Veerbhandas*, (1981) 128 ITR 606, 609 (Karn), **affirmed in** *CIT v. Lachhman Das Veerabhandas*, (2001) 247 ITR 810 (SC); *CIT v. B.C. Kothari*, (1986) 160 ITR 27 (Mad), special leave petition dismissed by the Supreme Court: (1992) 197 ITR (St.) 403-04 (SC); *CIT v. Rashmi Kamdar*, (1996) 217 ITR 559, 568 (Mad)].

The above state of law remained in operation for assessment years 1973-74 to 1986-87.

The Finance Act, 1986 (23 of 1986), has **amended section 10(3)** and has omitted section 80TT with effect from 1-4-1987, i.e., for and from assessment year 1987-88. The new position is:

Any receipts which are of a casual and non-recurring nature to the extent such receipts do not exceed Rs. 5,000¹ in the aggregate shall be exempt under section 10(3). It may be noted that for assessment years 1973-74 to 1986-87, such limit was Rs. 1,000 excluding the winnings from lotteries which enjoyed exemption under section 80TT in case of non-corporate taxpayers. Thus, in the hands of corporate taxpayers, the winnings from lottery were includible in their total income. For and from assessment year 1987-88, income by way of winnings from lotteries, both in the hands of corporate and the non-corporate taxpayers, enjoys exemption under section 10(3) itself to the extent provided therein. The taxable portion of winnings from lotteries is to be taxed at a flat rate of 40 per cent. as provided in the newly inserted section 115BB.

As a result of the **amendment of section 10(3)** by **the Finance (No. 2) Act, 1991** (49 of 1991), with effect from 1-10-1991, winnings from races including horse races have been excluded from the ambit of section 10(3).

As a result of the **amendment of section 10(3)** by **the Finance Act, 1992** (18 of 1992), with effect from 1-4-1992, winnings from races including horse races will not be included, for and from assessment year 1992-93, in the total income of a person, to the extent such receipts do not exceed Rs. 2,500 in the aggregate in a previous year.

The above position may be summarised as follows:

Exclusion, as per section 10(3), is in respect of—

- any receipts which are of a casual and non-recurring nature,—
- (for assessment years 1973-74 to 1986-87) not being winnings from lotteries,²
- to the extent such receipts do not exceed—
- (for assessment years 1973-74 to 1986-87) Rs. 1,000
- (for and from assessment year 1987-88) Rs. 5,000.

However, the extent of Rs. 5,000 has been reduced, for and from assessment year 1992-93, to Rs. 2,500 in respect of receipts relating to winnings from races including horse races.

Further, the provisions of section 10(3) shall not apply to—

- (i) (w. e. f. 1-4-1962) capital gains chargeable under the provisions of section 45; or
- (ii) (w. e. f. 1-4-1962) receipts arising from business or the exercise of a profession or occupation; or
- (iii) (w. e. f. 1-4-1962) receipts by way of addition to the remuneration of an employee; or
- (iv) (between 1-10-1991 and 31-3-1992) winnings from races including horse races.

1. Where the transitional previous year in relation to assessment year 1989-90 exceeds 12 months, the monetary limit of Rs. 5,000 is to be increased proportionately as per the provisions of rule 3 of the Tenth Schedule to the 1961 Act read with the Table appended to that rule 3.

2. For assessment years 1973-74 to 1986-87, in the case of non-corporate assesseees, winnings from lotteries were eligible for deduction under the then section 80TT. For and from assessment year 1987-88, tax on winnings from lotteries, etc., is to be levied as per the provisions of section 115BB.

Prize won in a contest, held not a casual and non-recurring receipt.—Prize won by the assessee in a contest held by a company has been held not to be a casual and non-recurring receipt as the same was result of effort and skill [*WG. CDR. K.P.K. Ghose v. CIT*, (2004) 268 ITR 260, 265 (All)].

Question of law.—(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the amount received by the assessee on surrender of tenancy rights, amounting to Rs. 6,83,017, is a casual and non-recurring receipt under section 10(3) not chargeable to tax [*CIT v. Eicher Goodearth Ltd.*, (2004) 267 ITR 769 (Del)].

Gifts received—whether leviable with income-tax.—Gifts, in the hands of the donees, do not ordinarily come within the definition of “income” for income-tax purposes. The following **departmental circular** No. 158, dated December 27, 1974, elaborates the point:—

‘Amendment to section 10(3) of the Income-tax Act, 1961—Effect of withdrawal of tax exemption in respect of receipts of casual and non-recurring nature on the liability to tax of gifts.—Section 10(3) of the Income-tax Act, 1961, was amended by the Finance Act, 1972, by which receipts of a casual and non-recurring nature in excess of Rs. 1,000³ would no longer be exempt from tax. A question has arisen as to whether this amendment would make receipts in the form of gifts liable to income-tax.

2. Receipts which are of a casual and non-recurring nature will be liable to income-tax only if they can properly be characterised as “income” either in its general connotation or within the extended meaning given to the term by the Income-tax Act. Hence, gifts of a purely personal nature will not be chargeable to income-tax, except when they can be regarded as an addition to the salary or when they arise from the exercise of a profession or vocation.

3. The above position may be brought to the notice of all officers working in your charge.’

INTEREST ON SPECIFIED SECURITIES OR BONDS IN CASE OF NON-RESIDENTS [S. 10(4)(i)]

Introduction under 1961 Act.—Exemption in case of certain specified income of non-residents was originally discussed under section 10(4) of the 1961 Act.

Legislative amendments under 1961 Act.—**I. The Finance Act, 1964.**—By the **Finance Act, 1964** (5 of 1964), **section 10(4)** was **amended (w. e. f. 1-4-1964)** to include exemption in respect of any income from interest on such securities as the Central Government may, by notification in the Official Gazette, specify in this behalf.

For the scope and effect of the above amendment, reference may be made to the following portion of *Departmental Circular No. 20D, dated 7-7-1964*, as follows:—

‘71. Section 6(i) of the Finance Act, 1964, has amended section 10(4) of the Income-tax Act, providing for the exemption of non-resident assessee from tax on income from interest on such securities as the Central Government may, by notifying in the Official Gazette, specify in this behalf. The object of this provision is to encourage foreign investment in approved securities, including debentures.’

II. The Direct Tax Laws (Amendment) Act, 1987.—By the **Direct Tax Laws (Amendment) Act, 1987** (4 of 1988), **sections 10(4) & 10(4A)** have been **substituted (w. e. f. 1-4-1989)** for **sections 10(4)(i) & (ii)**.

For the scope and effect of the above substitution, reference may be made to the following portion of *Departmental Circular No. 551, dated 23-1-1990*, as follows:—

‘Merger of clauses (4) and (4A) and also rationalization of the provisions of these clauses.—**3.3** Under the old provisions of clause (4), the following income was exempt in the case of a non-resident (whether an individual or a company or a firm, etc.):—

- (i) any income from interest on such securities as the Central Government might, by notification in the Official Gazette, specify in this behalf, and
- (ii) any income from interest on or from premium on redemption of certain type of bonds which were specified in the clause.

3.4 Under the old provisions of clause (4A), exemption from tax was provided to a *person resident outside India* in respect of his income from interest on money standing to his credit in a Non-Resident (External Account) in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973, and any rules made thereunder. An *Explanation* to this clause clarified that “person resident outside India” shall have the same meaning as in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973. From the definition given in section 2(q) of the Foreign Exchange Regulation Act, 1973, it follows that the provisions

3. Raised to Rs. 5,000 (w. e. f. 1-4-1987).

of this clause applied only to individuals residing outside India and not to any other entity like a company, firm, etc.

3.5 Since both the said clauses (4) and (4A) serve the same purpose of encouraging investments in India by non-residents by exempting income earned by them from certain securities, bonds or bank accounts, the Amending Act, 1987, has merged these two clauses into a single clause (4) with two sub-clauses (i) and (ii) providing for the same exemptions in a rationalized manner. The changes made are indicated below:—

- (i) Sub-clause (i) of the new clause (4), which corresponds to the old clause (4), provides that bonds, income from which by way of interest or premium on redemption is intended to be exempt, will also be notified in the official gazette in the same manner as securities. Consequently, the specific mention of the type of bonds, which occurred in the old clause (4), does not find place in sub-clause (i) of the new clause (4).
- (ii) Sub-clause (ii) of new clause (4), which corresponds to the old clause (4A), incorporates the provisions of the *Explanation* to the old clause (4A) in the main provision itself. It also clearly mentions that its provisions are applicable to an *individual* who is a “person resident outside India”, as defined in section 2(q) of the Foreign Exchange Regulation Act, 1973.’

III. The Finance Act, 2002.—By the **Finance Act, 2002** (20 of 2002), a **proviso to section 10(4)(i)** has been inserted (w. e. f. 1-4-2003).

For the scope and effect of the above insertion, *inter alia*, reference may be made to the following portion of *Departmental Circular No. 8 of 2002, dated 27-8-2002*:—

‘**7. Sunset clause for exemption with respect to bonds, etc.**—**7.1** The existing sub-clause (i) of clause (4) of section 10 provides for exemption in respect of income by way of interest on notified securities or bonds, including income by way of premium on redemption of such bonds. Clause (4B) of section 10 provides for exemption with respect to income by way of interest on notified saving certificates subscribed by an individual in convertible foreign exchange. Sub-clause (iib) of clause (15) of section 10 provides for similar exemption in respect of interest on notified Capital Investment Bonds. Sub-clause (iic) of clause (15) of section 10 provides for exemption in respect of interest from notified bonds arising to a non-resident Indian or a nominee or survivor of the non-resident Indian or any individual to whom the bonds have been gifted by the non-resident Indian.

7.2 In order to withdraw these exemptions, a sunset clause has been provided in all the aforesaid clauses of section 10 so that interest on bonds, certificates, securities, savings certificates, etc., which are issued on or after 1-6-2002 shall not be exempt.

7.3 These amendments will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent assessment years. [Sections 4(b), 4(c), 4(k)(i) and 4(k)(ii)]’.

Exemption in respect of certain specified income of non-residents (operative up to 31-3-1989).—As per **section 10(4) of the 1961 Act**, the following incomes in case of a non-resident were exempt from income-tax:—

- (i) any income from interest on specified bonds; or
- (ii) any income from premium on redemption of specified bonds.

For the above purpose, the specified bonds were:—

- (a) any bonds issued by the Central Government under a loan agreement between the Central Government of the one part and the International Bank for Reconstruction and Development of the other part; or
- (b) any bonds issued by the Central Government under a loan agreement between the Central Government of the one part and the Development Loan Fund of the United States of America of the other part; or
- (c) any bonds issued by any industrial undertaking or financial corporation of India under a loan agreement with the said Bank or Fund, as the case may be, which is guaranteed by the Central Government.

With effect from 1-4-1964, in addition to the above, any income from interest on such securities as the Central Government may, by notification in the Official Gazette, specify in this behalf was also exempt in case of a non-resident. In this context, the following securities had been notified by *Notification No. S.O. 3331, dated 19-10-1965*:—

- (1) 4¼% National Defence Loan, 1968.
- (2) 4¼% National Defence Loan, 1972.

Exemption in respect of certain specified income of non-residents (operative w. e. f. 1-4-1989).—**Sections 10(4) and 10(4A) of the 1961 Act** have been substituted (w. e. f. 1-4-1989) by the **Direct Tax Laws**

(Amendment) Act, 1987 (4 of 1988) as sections 10(4)(i) and (ii). Thus, as per **section 10(4)(i)**, the following incomes in case of a non-resident were exempt from income-tax:—

- (i) any income by way of interest on such securities or bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf; or
- (ii) any income by way of premium on the redemption of such bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Thus, the provisions of substituted **section 10(4)(i) of the 1961 Act** re-enact the provisions of the existing section 10(4) of the 1961 Act with the difference that the names of the various bonds mentioned in the existing section 10(4) of the 1961 Act have been taken out as the Central Government has been empowered to specify also the bonds, receipts wherefrom by way of interest or premium on redemption would be exempt under section 10(4)(i) of the 1961 Act.

Sunset clause for withdrawal of exemption under section 10(4)(i) of 1961 Act in respect of certain income from certain specified securities or bonds issued on or after 1-6-2002 in the case of a non-resident.—As a result of the insertion (w. e. f. 1-4-2003) of a new proviso in **section 10(4)(i) of the 1961 Act** by the **Finance Act, 2002** (20 of 2002), the Central Government shall not be empowered to specify securities or bonds, for the purposes of section 10(4)(i) of the 1961 Act, on or after 1-6-2002. This sunset clause has been enacted in order to withdraw exemption, under section 10(4)(i) of the 1961 Act, in respect of interest on such bonds or securities issued on or after 1-6-2002. The provisions of the said proviso shall be operative for and from assessment year 2003-04 in relation to such bonds or securities issued on or after 1-6-2002.

INTEREST INCOME ON SPECIFIED SAVINGS CERTIFICATES IN CASE OF CERTAIN NON-RESIDENT INDIVIDUALS [S. 10(4B)]

Introduction under 1961 Act.—*The Finance Act, 1982.*—By the **Finance Act, 1982** (14 of 1982), **section 10(4B)** has been inserted (w. e. f. 1-4-1983).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 346, dated 30-6-1982*, as follows:—

‘(iii) *Exemption of interest income of non-residents from specified savings certificates—Section 10(4B).*—

9.1 With a view to encouraging the flow of foreign exchange remittances into India, the Finance Act, 1982 (14 of 1982), has inserted a new clause (4B) in section 10 of the Income-tax Act to provide exemption from income-tax in the case of non-resident Indian citizens and foreign nationals of Indian origin, in respect of income by way of interest on savings certificates issued by the Central Government which that Government may by notification in the Official Gazette specify in this behalf. This exemption will apply only if such savings certificates have been subscribed to by the assessee in “convertible foreign exchange” remitted from a country outside India in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder. The exemption will be available only to the original subscriber of the savings certificates.

9.2 For the purpose of this exemption, a person will be deemed to be of Indian origin if he or either of his parents or any of his grand-parents was born in undivided India. Further, the expression “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the rules made thereunder.

9.3 This provision will take effect from 1-4-1983, and will accordingly apply in relation to assessment year 1983-84, and subsequent years. [Section 4(b) of the Finance Act, 1982 (14 of 1982)].’

Legislative amendments under 1961 Act.—**I. The Finance Act, 2002.**—By the **Finance Act, 2002** (20 of 2002), **section 10(4B)** has been amended (w. e. f. 1-4-2003).

For the scope and effect of the above amendment, reference may be made to paras. 7 to 7.3 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

II. The Finance Act, 2013.—By the **Finance Act, 2013** (17 of 2013), **section 10(4B)** has been amended (w. e. f. 1-4-2013).

For the scope and effect of the above amendment, reference may be made to paras. 33 to 33.4 of the *Departmental Circular No. 3 of 2014, dated 24-1-2014*.

Exemption in respect of interest income on specified savings certificates in case of certain non-resident individuals.—The provisions of **section 10(4B) of the 1961 Act** apply to a non-resident individual, being an Indian citizen or a person of Indian origin. As per *Explanation (a)*, a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

The provisions apply to any interest income on such savings certificates issued by the Central Government as may be specified in this behalf. In this regard, the National Savings Certificates VI and VII Issues are specified

savings certificates *vide Notification No. SO 653(E), dated 8-9-1982*: (1982) 137 ITR (St.) 48. For the purpose of National Savings Certificates VI and VII Issues, reference may be made to National Savings Certificates (VI Issue) Rules, 1981 (w. e. f. 1-5-1981) *vide Notification No. GSR 309(E), dated 24-4-1981* and National Savings Certificates (VII Issue) Rules, 1981 (w. e. f. 1-5-1981) *vide Notification No. GSR 310(E), dated 24-4-1981*, respectively.

Further, the individual has subscribed to such certificates in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the FEMA, 1999, and any rules made thereunder. As per **Explanation (b)**, “convertible foreign exchange” means foreign exchange which is for the time being treated by the RBI as convertible foreign exchange for the purposes of the FEMA, 1999 (42 of 1999), and any rules made thereunder.

Sunset clause for withdrawal of exemption under section 10(4B) of 1961 Act.—As a result of amendment (w. e. f. 1-4-2003) in section 10(4B) of the 1961 Act by the Finance Act, 2002 (20 of 2002), a sunset clause has been enacted to the effect that exemption under section 10(4B) of the 1961 Act shall be granted only in respect of interest on savings certificates issued before 1-6-2002.

INTEREST INCOME BY ANY INDIAN COMPANY OR BUSINESS TRUST TO NON-RESIDENTS ARISING FROM BORROWINGS BY WAY OF ISSUE OF RUPEE DENOMINATED BONDS REFERRED TO IN SECTION 194LC(2)(ia) OF 1961 Act BETWEEN SPECIFIED PERIOD [S. 10(4C)]

Introduction under 1961 Act.—*The Finance (No. 2) Act, 2019.*—By the Finance (No. 2) Act, 2019 (23 of 2019), section 10(4C) of the 1961 Act has been inserted (w. r. e. f. 1-4-2019).

For the explanation of the above insertion, refer the following portion of the *Memorandum explaining the provisions in the Finance (No. 2) Bill, 2019 (Bill No. 55 of 2019)*:—

‘Exemption of interest income of a non-resident arising from borrowings by way of issue of Rupee Denominated Bonds referred to under section 194LC.—The existing provisions of section 194LC of the Act provide that the interest income payable to a non-resident by a specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bond including long-term infrastructure bond, or rupee denominated bond shall be eligible for TDS at a concessional rate of five per cent.

In order to incentivize low-cost foreign borrowings through Off-shore Rupee Denominated Bond, the press release dated 17th September, 2018, *inter alia*, announced that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from September 17, 2018 to March 31, 2019 shall be exempt from tax. Consequently, no tax was required to be deducted on the payment of interest in respect of the said bond. The exemption announced through the said press release is proposed to be incorporated in the law by amending section 10 of the Act so as to provide exemption to income payable by way of interest to a non-resident by the specified company in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in section 194LC, during the period beginning from the 17th day of September, 2018 and ending on the 31st day of March, 2019.

This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years. [*Clause 6*].

Exemption in respect of interest income payable to non-residents in respect of monies borrowed from a source outside India by way of issue of rupee denominated bonds (RDBs) referred to in section 194LC(2)(ia) of 1961 Act between specified period.—The Finance (No. 2) Act, 2019 has inserted (w. e. f. 1-4-2019) section 10(4C) of the 1961 Act which provides exemption in respect of any income by way of interest payable to a non-resident (not being a company) or to a foreign company. Such interest is payable by any Indian company or business trust in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond [as referred to in section 194LC(2)(ia) of the 1961 Act] during the period between 17-9-2018 and 31-3-2019 (including both days).

Thus, interest paid by an Indian company or a business trust on offshore RDBs issued between 17-9-2018 and 31-3-2019 is exempt from tax.

REMUNERATION TO NON-CITIZEN AND NON-RESIDENT INDIVIDUAL WHO COMES TO INDIA SOLELY IN CONNECTION WITH SHOOTING OF A CINEMATOGRAPH FILM IN INDIA
[Omitted s. 10(5A)]

Introduction under 1961 Act.—*The Taxation Laws (Amendment) Act, 1984.*—By the Taxation Laws (Amendment) Act, 1984 (67 of 1984), section 10(5A) was inserted (w. r. e. f. 1-4-1982).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 394, dated 14-9-1984*:—

'5. Exemption of remuneration received for rendering services in connection with shooting of cinematograph films by foreign films producers.—5.1 The Amending Act has inserted a new clause (5A) in section 10 of the Income-tax Act relating to incomes not included in total income.

5.2 New clause (5A) provides that in the case of an individual *who is not a citizen of India and is a non-resident*, who comes to India solely in connection with the shooting of a cinematograph film in India by the individual, firm or company referred to in new clause (d) of the *Explanation* to section 9(1)(i) of the Income-tax Act, any remuneration received by him for rendering any service in connection with such shooting shall not be included in computing the total income of such individual.

5.3 The aforesaid provision takes effect from 1st April, 1982, and will, accordingly, apply in relation to the assessment year 1982-83 and subsequent years. [*Section 4(a) of the Amending Act*].

Omission of section 10(5A) of 1961 Act.—The Finance (No. 2) Act, 1998.—By the Finance (No. 2) Act, 1998 (21 of 1998), section 10(5A) has been omitted (w. e. f. 1-4-1999).

The scope and effect of the above omission have been elaborated in the following portion of the *Departmental Circular No. 772, dated 23-12-1998*, as follows:—

'6. Removal of certain exemptions.—6.1 The remuneration received by foreign nationals who come to India in connection with shooting of a cinematograph film is exempt from income-tax under the provisions of clause (5A) of section 10. This provision was inserted with effect from 1-4-1982, and has since outlived its utility. The Finance (No. 2) Act, 1998 (21 of 1998), therefore, omits the same.

* * *

6.4 These amendments will take effect from 1-4-1999, and will accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [*Section 5*].

TAX CONCESSION TO NON-RESIDENT TECHNICIANS HOLDING INDIAN CITIZENSHIP [Omitted s. 10(5B)]

Introduction under 1961 Act.—The Finance Act, 1993.—By the Finance Act, 1993 (38 of 1993), section 10(5B) was inserted (w. e. f. 1-4-1994).

For the scope and effect of the above insertion reference may be made to paras. 14 to 14.2 of the *Departmental Circular No. 657, dated 30-8-1993*.

Legislative amendment under 1961 Act.—I. The Finance Act, 1999.—By the Finance Act, 1999 (27 of 1999), section 10(5B) was amended (w. e. f. 1-4-1999).

The scope and effect of the above amendment had been elaborated in the following portion of the *Departmental Circular No. 779, dated 14-9-1999*:—

'Amendment of section 10(5B).—55. (ii) Sub-clause (viiia) of clause (6) of section 10 was omitted by the Finance (No. 2) Act, 1998. Consequent to this omission, reference to the said sub-clause in clause (5B) of section 10 is omitted by the Finance Act, 1999.

This amendment takes effect from the 1st day of April, 1999, and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [*Section 6*].

Exemption in respect of tax paid for a certain period in case of certain technicians for services commencing on or after 1-4-1993.—An assessee was entitled to exemption under **section 10(5B) of the 1961 Act** provided the following conditions were fulfilled:

- (i) he was a non-resident individual in India in all the 4 financial years immediately preceding the financial year in which he arrived in India. **However**, in this regard, the **proviso** empowered the Central Government, if it considers it necessary or expedient in the public interest so to do, to waive this condition relating to non-residence in India in the case of any individual who is employed in India for designing, erection or commissioning of machinery or plant or supervising activities connected with such designing, erection or commissioning;
- (ii) he was rendering service as a *technician* [as defined];
- (iii) his employment commences from a date after 31-3-1993;
- (iv) he was in the employment—
 - (a) of the Government; or
 - (b) of a local authority; or
 - (c) of any corporation set up under any special law or

- (d) of any such institution or body established in India for carrying on scientific research as is approved for the purposes of section 10(5B) of the 1961 Act or [(up to 31-3-1999) section 10(6)(viii) of the 1961 Act] by the prescribed authority; or
- (e) in any business carried on in India; and
- (v) the tax on his income for such services chargeable under the head “Salaries” was paid by the employer to the Central Government [which tax, in the case of an employer, being a company, may be paid notwithstanding anything contained in section 200 of the Companies Act, 1956].

If all the above conditions are fulfilled, then assessee was entitled to exemption in respect of the tax so paid by the employer for a period not exceeding 48 months commencing from the date of his arrival in India.

“*Technician*”, defined.—For the purposes of section 10(5B) of the 1961 Act, the **Explanation** to that section coins a definition of the expression “technician” so as to **mean** a person having specialized knowledge and experience in:—

- (i) constructional or manufacturing operations, or in mining or in the generation of electricity or any other form of power, or
- (ii) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building, or
- (iii) the following other fields as the Central Government had, having regard to availability of Indians having specialized knowledge and experience therein, the needs of the country and other relevant circumstances, by notification in the Official Gazette, specified [*i.e.*, (a) Grading and evaluation of diamonds for diamond export or import trade; (b) cookery; and (c) information technology including computer architecture systems, platforms and associated technology, software development process and tools *vide Notification No. SO 569(E), dated 27-7-1993*],

who is employed in India in a capacity in which such specialized knowledge and experience are actually utilized.

Omission of section 10(5B) of 1961 Act.—*The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), section 10(5B) was omitted (w. e. f. 1-4-2003).

For the scope and effect of the above omission, reference may be made to paras. 8.1, 8.4 and 8.5 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

OMITTED PROVISIONS OF SECTION 10(6)

Legislative amendments under 1961 Act.—*1. The Finance Act, 1964.*—By the Finance Act, 1964 (5 of 1964), the following amendments (w. e. f. 1-4-1964) have been made—

- section 10(6)(vii)(a) has been amended; and
- sections 10(6)(ix) & (x) have been inserted.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 20D, dated 7-7-1964*:—

‘*Tax concession to individuals of foreign citizenship.*—**31.** In the context of the need for accelerating the industrial development of India, for which it is, *inter alia*, necessary to encourage the inflow of foreign investments in fields in which technology is of a high order, and to acquire the scientific, technological and managerial knowledge and skill developed in foreign countries, some provisions have been made in the Finance Act, 1964, for certain tax concessions to foreigners working in India.

32. These concessions are briefly as follows:

- (1) Under section 10(6)(vii)(a) of the Income-tax Act, as it stood before amendment by the Finance Act, 1964, the contract of service of a foreign technician should have been approved by the Central Government before the commencement of his service in order to entitle him to the exemption from tax on his salary income in India for the extended period of 36 months (6 months in the case of a technician having special knowledge and experience in industrial or business management techniques) from the date of his arrival in India. This provision has been amended to secure that the exemption will be available, even if the contract of service of a foreign technician has been approved by the Central Government within one year of the commencement of his service *vide* section 6(ii)(a) of the Finance Act, 1964. The provision, as amended, will apply to the assessment for the assessment year 1964-65 and subsequent years.
- (2) A new sub-clause (ix) has been introduced in section 10(6) of the Income-tax Act by section 6(ii)(b) of the Finance Act, 1964, under which an individual of foreign citizenship will, subject to the fulfilment of certain conditions, be exempt from tax on the salary income received by him for rendering service as a professor or teacher in a University or other educational institution in India for a period of 36 months from the date of his arrival in India. In the event of his continuing in

employment beyond the 36 months aforesaid, he will further be exempt from tax on the amount paid by the university or educational institution concerned in discharge of his tax liability. The conditions under which the above-mentioned exemptions will be available are that (i) the person concerned was not resident in India during any of the four financial years immediately preceding the financial year in which he arrived in India and that (ii) his contract of service is approved by the Central Government (a) on or before 1st October, 1964, in the case of a professor or teacher whose service commenced before 1st April, 1964, and (b) before the commencement of his service or within one year thereof, in any other case. The exemption under this new provision will be available in respect of assessment for the assessment year 1964-65 and subsequent years.

- (3) Another new sub-clause (x) has been introduced in section 10(6) of the Income-tax Act by section 6(ii)(b) of the Finance Act, 1964, under which an individual of foreign nationality who undertakes any research work in India will be exempt from tax on any sum due or received by him for carrying out the research work for a period of 24 months from the date of his arrival in India, subject to the conditions that (i) the research scheme under which he is working is approved by the Central Government on or before the 1st October of the relevant assessment year; and (ii) the remuneration is payable or paid to him directly or indirectly from a foreign source, i.e., the Government of a foreign State or institution or association or body established outside India. This exemption will also be available in respect of the assessment year 1964-65 and subsequent assessment years.’.

II. The Finance Act, 1965.—By the Finance Act, 1965 (10 of 1965), section 10(6)(vii)(a) has been amended (w. e. f. 1-4-1965) at two places.

The scope and effect of the above amendment have been elaborated in the following portion of the Departmental Circular No. 3-P, dated 11-10-1965:—

‘Extension of the period of exemption from tax of foreign technicians on the perquisite represented by the payment, by their employers, of tax on their salary.—92. Under section 10(6)(vii)(a)(ii) of the Income-tax Act, as it stood before its amendment by the Finance Act, 1965, a foreign technician (other than technician having a special knowledge and experience in industrial and business management techniques) whose contract of service had been approved by the Central Government within one year of the commencement of his service was entitled to an exemption from tax on his salary income for the first 36 months of his employment in India. If he continued in employment in India after that period, and the tax on his salary income was paid by his employer, the technician was further entitled to an exemption from tax on the perquisite represented by such payment, for a period of twenty-four months. Thus, the total period for which such a foreign technician was exempt from tax on his salary income in India was 5 years. However, Indian concerns employing such technicians in industries involving complicated and sophisticated modern techniques, sometimes, need their services for a longer period. The above-mentioned provision has, therefore, been amended by the Finance Act, 1965, with effect from 1st April, 1965, by way of extending the period of the second mentioned exemption from tax, in respect of the perquisite represented by the payment by the employer of tax on the salary of a foreign technician, from 2 years to 5 years, subject to the condition that the approval of the Central Government to the continuation of his employment in India beyond the initial 36 months has been obtained before the 1st October of the relevant assessment year. The total period of exemption of such a foreign technician from tax in respect of his salary income has thus been extended from 5 years to 8 years.

93. Under the above-mentioned provision, as it stood before the amendment, a foreign technician was not required to obtain the approval of the Central Government for continuing in employment in India beyond the initial period of exemption for 36 months, for the purpose of his exemption from tax on the above-mentioned perquisite. Under the amended provision, such approval is necessary and has to be obtained before the 1st October of the relevant assessment year. The amended provision is effective for the assessment year 1965-66 and subsequent years. In respect of any assessment for the assessment year 1964-65 or any earlier year, the provision of section 10(6)(vii)(a)(ii), as they stood prior to the amendment, will continue to apply and no exemption will be admissible for those assessment years in respect of the perquisite referred to above for a period beyond the first 5 years (sixty months) of the technician’s employment in India. For example, if a foreign technician (whose contract of service for the first 36 months of his employment has been approved by the Central Government) joined service in India on 1-4-1958 and continues in employment in India for 8 years upto 31-3-1966 and obtained the approval of the Central Government, on the 30th September, 1965, to the continuation of his employment beyond the first 3-years period of his service for a further period of 5 years from 1-4-1961 upto 31-3-1966, he will be entitled to exemption from tax, under the pre-existing provisions of section 10(6)(vii)(a)(ii) on (a) his salary income in India for the 3 assessment years 1959-60 to 1961-62; and (b) on the perquisite, represented by the payment by his employer of tax on his salary income, for the next two assessment years 1962-63 and 1963-64, but will not be entitled to such exemption for the assessment year 1964-65. Thereafter, he will be entitled to exemption from tax on the above-mentioned

perquisite, under the amended provisions of section 10(6)(vii)(a)(ii) of the Income-tax Act, for the assessment years 1965-66 and 1966-67. For the purpose of the assessment year 1966-67, it will not be necessary for the technician to obtain a fresh approval of the Central Government to the continuation of his employment, if the approval obtained by him for the purpose of the assessment year 1965-66 also covers the full period of his employment during the previous year for the assessment year 1966-67.

III. The Taxation Laws (Amendment) Act, 1970.—By the **Taxation Laws (Amendment) Act, 1970** (42 of 1970), the following amendments have been made—

- section 10(6)(i)** has been **substituted (w. r. e. f. 1-4-1962)**;
- section 10(6)(vii)** has been **amended (w. e. f. 1-4-1971)**;
- Explanation to section 10(6)(vii)** has been **amended (w. e. f. 1-4-1971)**; and
- section 10(6)(viii)** has been **inserted (w. e. f. 1-4-1971)**.

For the scope and effect of substitution of section 10(6)(i), refer paras. 96 to 98 of the *Departmental Circular No. 56, dated 19-3-1971*.

The scope and effect of other amendments have been elaborated in the following portion of the *Departmental Circular No. 56, dated 19-3-1971*:—

‘Modification of the scheme of tax exemption of the remuneration of foreign technicians.—68. The Income-tax law has, for several years past, provided for the exemption from tax of the remuneration of foreign technicians employed in India. These provisions, which were first introduced in the law on 1st April, 1955, have been liberalized from time to time. Under the existing provisions in this behalf, a foreign technician whose contract of service is approved by the Central Government within a specified period in entitled to exemption from tax on his remuneration in India for a period of 36 months from the date of his arrival in India. Further, where the foreign technician continues in employment in India after the expiry of the 36 months period, and his employer pays the tax due on his salary income to the Government, the perquisite represented by the payment of his tax dues by the employer is exempt from further tax in the hands of the technician for a further period of 60 months. Thus, a foreign technician may be employed in India on a tax-free remuneration for a total period of 8 years. This provision has enabled Indian industry to secure the services of foreign technicians at a reasonable cost. However, in order that our industry may not lean too heavily on the employment of foreign technicians for long periods in preference to Indian technicians having comparable qualifications, expertise and experience, and also to make our industrial enterprises bear a higher share of the cost of employing foreign experts, the provisions relating to the tax exemption of the remuneration of foreign technicians have been modified in certain directions. The modified scheme has been incorporated in a new sub-clause (viii) inserted in clause (6) of section 10 of the Income-tax Act and will be applicable to foreign technicians entering employment in India after 31st March, 1971. The salient features of the new provisions are explained in the following paragraphs:

69. Period of exemption.—Under the new provisions, a foreign technician having specialized knowledge and experience in industrial and business management techniques will not be entitled to any exemption from tax in India. Presently, such a technician enjoys exemption from tax for a period of 6 months from the date of his arrival in India. The Select Committee which considered the Taxation Laws (Amendment) Bill, 1969, was of the view that, having regard to the availability of Indian technicians in this field, there would be no justification for continuing the tax exemption for management technicians any longer.

70. In the case of other foreign technicians, the period of exemption of the remuneration from tax has been reduced from 36 months to 24 months. During this period, the foreign technician will be entitled to exemption on his remuneration up to an amount calculated at the rate of ₹ 4,000 for every month of his employment in India during the relevant year. The remuneration, if any, in excess of ₹ 4,000 per month will be liable to tax but, if the employer pays the tax on such excess to the Central Government, the perquisite represented by the tax so paid by the employer will also be exempt from further taxation in the hands of the technician. After the initial period of 24 months from the date of his arrival in India, the whole of the remuneration of the technician will be chargeable to tax. However, if the employer pays the tax on the whole of the remuneration to the Central Government, the perquisite represented by the tax so paid will be exempt from further taxation in the hands of the foreign technician. This latter exemption will be available for a period of 24 months next following the initial period of 24 months as stated above. Thus, the total period for which a foreign technician may be employed in India after the 31st March, 1971, on a tax-free remuneration will be 4 years, as against 8 years at present.

71. Definition of foreign technician—The definition of the term “technician” has been modified so as to cover—besides persons having specialized knowledge and experience in constructional or manufacturing operations or in mining or in the generation of electricity or any other form of power—also those having similar knowledge and experience in agriculture, animal husbandry, dairy farming, deep sea fishing or ship-building

with a view to enabling the employment of foreign experts in these fields for the development of our food resources and our ship-building industry. At the same time, industrial or business management experts and also persons having specialized knowledge and experience in distribution of electricity or any other form of power (as distinct from generation) have been excluded from the purview of the term "technician".

72. Categories of enterprises or agencies which may employ foreign technicians.—Presently, the tax exemption is available to foreign technicians employed by Government or any local authority or any corporation set up under any special law or in any business carried on in India. Under the new provisions, the tax exemption will be available also in the case of foreign technicians employed by any institution or body established in India for carrying on scientific research, which is approved in this behalf by the prescribed authority. The authorities already prescribed in the Income-tax Rules for the purpose of approving scientific research associations, universities, colleges, and other institutions for the purpose of the tax concessions in respect of scientific research expenditure, namely, the C.S.I.R. (Council of Scientific and Industrial Research), the I.C.A.R. (Indian Council of Agricultural Research) and the I.C.M.R. (Indian Council of Medical Research) will be the authorities for granting approval to scientific research institutions or bodies for the purpose of the new provision in section 10(6)(viii) also.

73. As under the existing provisions in section 10(6)(vii), the foreign technician should not have been resident in India in any of the four financial years immediately preceding the financial year in which he arrived in India, in order to be eligible for the exemption from tax on his remuneration. The existing requirement of approval of the contract of service of the technician by the Central Government also continues to apply, with the modifications that such approval will, hereafter, be required to be obtained in all cases, and that the application for the approval should be made to the Central Government before the commencement of service of the technician in India or within six months of such commencement. The exemption from tax under the new provisions will not be available in any case in the absence of such approval. Presently, the exemption from tax is available, without the requirement of approval, for a period of 12 months in the case of technicians other than industrial or business managements experts. This provision has now been discontinued.

74. As stated earlier, the new provisions in clause (viii) of section 10(6) will apply to foreign technicians who enter employment in India after the 31st March, 1971. Foreign technicians who are already in employment or who enter employment in India up to the 31st March, 1971, will be eligible for the tax concessions under the existing provision in sub-clause (vii) of section 10(6).

75. By a consequential amendment to section 40, it has been secured that in applying the limit specified in sub-clause (v) of clause (a) of that section over the deductible amount of expenditure incurred in a business or profession for providing benefits, amenities or perquisites to employees, the tax paid by the employer on the salary of a foreign technician, which is eligible for exemption from further taxation as income of the foreign technician under the new sub-clause (viii) of section 10(6), will not be taken into account. [Section 3(c)(ii) and (iii) and section 10 of the Amending Act].

IV. The Direct Taxes (Amendment) Act, 1974.—By the **Direct Taxes (Amendment) Act, 1974** (26 of 1974), a proviso to section 10(6)(viii) has been inserted (w. r. e. f. 1-4-1973) before the *Explanation*.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 145, dated 9-9-1974*:—

'Liberalization of the provisions relating to tax exemption of remuneration of foreign technicians.—**5.** Under section 10(6)(viii), foreign technicians having specialized knowledge and experience in constructional or manufacturing operations or in mining or in the generation of electricity or any other form of power, or in agriculture, animal husbandry, dairy farming, deep sea fishing or ship building enjoy special concession in certain cases. One of the important conditions for availing of the tax concession is that the foreign technician should not have been a resident of India in any of the four financial years immediately preceding the financial year in which he arrives in India. The Amending Act has modified the provisions in section 10(6)(viii) with a view to empowering the Central Government to waive the condition regarding non-residence in India in the immediately preceding four years in cases where it considers it necessary or expedient to do so in the public interest. The new provision will be applicable only in the case of foreign technicians who are engaged for designing, erection or commissioning of machinery and plant or for supervising activities connected therewith. It should be noted that section 10(6)(viii) applies only in the case of technicians entering service after 31st March, 1971, and, accordingly, the Central Government will be empowered to waive the condition regarding non-residence in the immediately preceding four financial years only in the case of technicians entering service after that date.

This amendment has come into force with retrospective effect from 1-4-1973, and is, accordingly, applicable in relation to the assessment year 1973-74 and subsequent years. [Section 2(a) of the Amending Act].

V. The Taxation Laws (Amendment) Act, 1975.—By the **Taxation Laws (Amendment) Act, 1975** (41 of 1975), **section 10(6)(via)** has been **inserted (w. e. f. 1-10-1975)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 179, dated 30-9-1975*:—

‘Tax exemption of remuneration received by non-Indian employees of foreign philanthropic institutions, etc.—4. The Amending Act has introduced a new sub-clause (*via*) in clause (6) of section 10 of the Income-tax Act with a view to exempting from income-tax remuneration received by individuals, other than Indian citizens, from foreign philanthropic institutions, associations or bodies in certain circumstances. The exemption from income-tax will be available if the following conditions are fulfilled, namely:—

- (i) The individual concerned is not a citizen of India.
- (ii) He is either an employee of, or a consultant to, an institution or association or body established or formed outside India.
- (iii) The said association, institution or body is established or formed solely for philanthropic purposes.
- (iv) The said association, institution or body is approved by the Central Government.
- (v) The remuneration is received for services rendered in India.
- (vi) The services in question are rendered for a purpose which has been approved by the Central Government.

5. This amendment will apply in relation to the assessment year 1976-77 and subsequent years. [*Section 3(i) of the Amending Act*].

VII. The Finance (No. 2) Act, 1977.—By the **Finance (No. 2) Act, 1977** (29 of 1977), **section 10(6)(i)(aa)** has been **inserted (w. r. e. f. 1-4-1972)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 229, dated 9-8-1977*:—

‘8. Exemption of certain passage moneys paid to foreign employees.—8.1 The Finance (No. 2) Act, 1977, has inserted a new item (*aa*) in sub-clause (*i*) of clause (6) of section 10 of the Income-tax Act to provide exemption in respect of passage moneys or the value of any free or concessional passage received by or due to an individual who is not a citizen of India from his employer, for his children having full time education in any educational institution outside India, in connection with their proceeding to India during vacation. It is relevant to note that exemption under the new provision is available in respect of passage moneys or the value of free or concessional passage received by or due to foreign employees in connection with their children proceeding to India during vacation. As the return journey of the children after the end of their vacation in India is necessarily connected with their visit to India, the passage moneys or the value of free or concessional passage for such return journey will be in connection with the children proceeding to India during vacation. As such, exemption under the new provision will be available not only in respect of passage moneys or the value of free or concessional passage for the journey to India, but would also extend in respect of the passage moneys for the journey back to the foreign country in which the children of the individual are having full time education.

8.2 The amendment has been made with retrospective effect from 1st April, 1972, and will, accordingly, apply in relation to the assessment year 1972-73 and subsequent years. [*Section 5(a) of the Finance (No. 2) Act, 1977*].

VIII. The Finance Act, 1979.—By the **Finance Act, 1979** (21 of 1979), the following **amendments (w. e. f. 1-6-1979)** have been made—

—**Explanation (ii) to section 10(6)(viii)** has been **amended**; and

—**Explanation (iii) to section 10(6)(viii)** has been **inserted**.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 258, dated 14-6-1979*:—

‘6. Extension of the scheme of tax exemption of the remuneration of foreign technicians to persons in notified fields.—6.1 Under section 10(6)(viii) of the Income-tax Act, a foreign technician employed by the Government, a local authority, a statutory corporation, or an approved scientific research association or institution or any business in India is entitled to a limited exemption from income-tax in respect of his income chargeable under the head “Salaries”, subject to certain conditions. For this purpose, a “technician” means a person having specialized knowledge and experience in constructional or manufacturing operations; mining; generation of electricity or any other form of power; agriculture; animal husbandry; dairy farming; deep sea fishing and ship building. This definition of the term “technician” is not comprehensive enough to cover persons with specialized knowledge and experience in other fields of disciplines which have or may

assume importance for the economic development of the country. The Finance Act, 1979, has inserted a new clause (iii) in the *Explanation* to section 10(6)(viiia) to empower the Central Government to notify additional fields for the purpose so that a foreign technician having the requisite specialized knowledge and skill would become eligible for the tax exemption. While notifying the additional fields, the Central Government will have regard to the availability of the Indian technicians in the field, the needs of the country and other relevant circumstances.

6.2 This provision has come into force with effect from 1st June, 1979, and will accordingly apply in relation to the assessment year 1980-81 and subsequent years. [Section 3(a) of the Finance Act, 1979].

IX. The Finance Act, 1988.—By the Finance Act, 1988 (26 of 1988), the following amendments have been made—

- section 10(6)(viiia) (opening paragraph) has been amended (w. e. f. 1-4-1988);
- section 10(6)(viiia)(A) has been amended (w. e. f. 1-4-1988); and
- proviso to section 10(6)(viiia) has been amended (w. e. f. 1-4-1988).

The scope and effect of the above amendments to section 10(6) have been elaborated in the following portion of the *Departmental Circular No. 528, dated 16-12-1988*:—

‘12. Withdrawal of the benefit of exemption of remuneration paid to foreign technicians.—12.1 Under the existing provisions of sub-clause (viiia) of clause (6) of section 10 of the Income-tax Act, the remuneration due to or received by a foreign technician who is in the employment of Government or an approved scientific research institution or any business is exempt up to an amount of ₹ 4,000 per month, subject to certain specified conditions for a maximum period of 24 months. Further if the employer pays the tax on the remuneration exceeding ₹ 4,000 per month to the Central Government, the perquisite value of tax so paid for the period of 24 months is exempt from taxation in the hands of the foreign technician. The exemption for perquisite value of tax paid by employer can be available for a further period of 24 months if he continues with the approval of Central Government. The existing provisions are against the avowed policy of achieving self-reliance in the field of science and technology particularly in view of the fact that India possesses the third largest pool of scientific and technical manpower. With a view to overcome the existing distortion against the Indian technicians, the benefit of exemption from total income of remuneration up to an amount calculated at the rate of ₹ 4,000 per month for a period of 24 months received by a foreign technician has been withdrawn. However, as earlier, the exemption in respect of the perquisite value of tax paid by the employer of a foreign technician has been retained.

12.2 This amendment will be applicable in the case of a foreign technician employed on or after 1st April, 1988.’

X. The Finance Act, 1992.—By the Finance Act, 1992 (18 of 1992), the following amendments (w. e. f. 1-6-1992) have been made to section 10(6)(viiia)—

- section 10(6)(viiia) (opening portion) has been amended;
- 1st proviso to section 10(6)(viiia) has been omitted; and
- 2nd proviso to section 10(6)(viiia) has been amended.

For the scope and effect of the above amendment, reference may be made to paras. 17 to 17.5 of the *Departmental Circular No. 636, dated 31-8-1992*.

XI. The Finance Act, 1993.—By the Finance Act, 1993 (38 of 1993), the following amendments (w. e. f. 1-4-1993) have been made—

- section 10(6)(vii) has been omitted; and
- section 10(6)(viiia)(II) has been amended.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 657, dated 30-8-1993*:—

‘Extending the tax concession under section 10(6)(viiia) to non-resident technicians holding Indian citizenship.—14. Under the provisions of section 10(6)(viiia) of the Income-tax Act, the perquisite represented by the income-tax paid by an employer on the salary of its employee, who is not a citizen of India and is engaged as a technician and his services, as such, commence from a date after 31st March, 1988, is exempt from income-tax. It is further provided therein that such individual should not have been resident in India in any of the four financial years immediately preceding the financial year in which he arrived in India. This condition can be waived by the Central Government in specified cases. The term “technician” has been defined for the purposes of section 10(6)(viiia).

14.1 It had been represented that the condition of being a foreign citizen in order to avail of the tax concession under section 10(6)(viiia) discriminated against non-resident technicians who were Indian citizens.

The Finance Act, 1993, therefore, inserts a new clause (5B) in section 10 of the Income-tax Act to provide that the tax concession, at present available under section 10(6)(viii) to technicians who are not citizens of India, will be available to the technicians who commence their employment in India as such after the 31st day of March, 1993, irrespective of their nationality. All other features specified in sub-clause (viii) of clause (6) of section 10 have been retained in the new provision.

14.2 This amendment takes effect from 1st April, 1994, and, accordingly, applies in relation to the assessment year 1994-95 and subsequent years.

14.3 As a consequence of the aforesaid amendment, the Finance Act, 1993, also amends sub-clause (viii) of clause (6) of section 10 to restrict its application to cases where services as a technician commence after the 31st day of March, 1988, but before the 1st day of April, 1993.

14.4 This amendment takes effect from 1st April, 1993. [Section 3]

Omission of section 10(6)(vii).—**15.** Section 10(6)(vii) of the Income-tax Act provided income-tax concession to foreign technicians on the remuneration received by them where the employment in India commenced prior to 1st April, 1971. The said tax concession was available for a maximum period of eight years and the provision was no longer necessary. The Finance Act, 1993, therefore, omits sub-clause (vii) of clause (6) of section 10.

15.1 This amendment takes effect from 1st April, 1993. [Section 3]’.

XII. The Finance (No. 2) Act, 1998.—By the Finance (No. 2) Act, 1998 (21 of 1998), the following amendments (w. e. f. 1-4-1999) have been made—

- section 10(6)(i)(aa) has been omitted;
- section 10(6)(via) has been omitted;
- section 10(6)(viii) has been omitted;
- section 10(6)(ix) has been omitted; and
- section 10(6)(x) has been omitted.

The scope and effect of the above omissions have been elaborated in the following portion of the Departmental Circular No. 772, dated 23-12-1998:—

‘6. Removal of certain exemptions.—* * *

6.2 Several perquisites of foreigners employed in India were exempt from income-tax under clause (6) of section 10. These include perquisites specified in the following sub-clauses:—

6.2.1 Sub-clause (i)(aa) provides for exemption in respect of passage fare of children, paid by the employer of a foreign national, proceeding to India during vacation.

6.2.2 Sub-clause (via) provides exemption in respect of remuneration to employees or consultants of a foreign philanthropic body.

6.2.3 Sub-clause (viii) provides exemption in respect of tax perquisites of foreign technicians.

6.2.4 Sub-clause (ix) provides exemption in respect of tax perquisites of foreign teachers or professors.

6.2.5 Sub-clause (x) provides exemption in respect of amount received by a non-resident for conducting research during 24 months commencing from his arrival in India.

6.2.6 The Finance (No. 2) Act, 1998, omits these sub-clauses as a rationalization measure.

* * *

6.4 These amendments will take effect from 1st April, 1999, and will accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [Section 5]’.

XIII. The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), section 10(6)(i) has been omitted (w. e. f. 1-4-2003).

The scope and effect of the above omission have been elaborated in the following portion of the Departmental Circular No. 8 of 2002, dated 27-8-2002:—

‘9. Withdrawal of exemption on certain remuneration received by an employee who is a foreign citizen.—

9.1 Under the existing provisions contained in sub-clause (i) of clause (6) of section 10, passage money or the value of any free or concessional passage, received by or due to an employee, who is not a citizen of India, for himself, his spouse and children, is exempt, subject to certain conditions.

9.2 Sub-clause (i) of clause (6) of section 10 has been omitted through the Finance Act, 2002, so as to withdraw this exemption.

9.3 This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years. [Section 4(e)]’.

Exemption in respect of passage moneys or value of any free or concessional package [s. 10(6)(i) of 1961 Act].—Section 10(6)(i) of the 1961 Act, as originally enacted, granted exemption, subject to such conditions as may be prescribed in that behalf, to passage moneys or the value of any free or concessional passage received or due to the employee for himself, his wife and children in connection with his proceeding on home leave out of India. This section, as **amended by the Taxation Laws (Amendment) Act, 1970** (42 of 1970), which has been given a **retrospective effect from 1-4-1962**, extends the benefit also on passage moneys or the value of any free or concessional passage received from the employer or a former employer for himself, his spouse and children, in connection with his proceeding to his home country after retirement from, or termination of, his service in India. Thus, the substituted clause is applicable to employees of both sexes.

In *CIT v. G.B. Shuttelworth*, (1986) 161 ITR 486 (Ker), the passage money paid to the assessee by the employer for the trip of assessee's son from India to UK has been held to be passage money received by the assessee for his child in connection with his proceeding on home-leave within the meaning of section 10(6)(i) of the 1961 Act and exempt as such.

Section 10(6)(i)(a) of the 1961 Act grants a separate and an independent exemption in respect of passage money and such exemption is not subject to the ceiling fixed by section 10(6)(viii)(a) of the 1961 Act. In other words, exemption under section 10(6)(i)(a) of the 1961 Act cannot be clubbed with the exemption under section 10(6)(viii)(a) of the 1961 Act, as it was available for the assessment year 1973-74 [*CIT v. Kuipers Tiesto*, (1998) 230 ITR 128, 129, 138 (Bom)].

The following *Notification No. GSR 72(E), dated 10-2-1977* has been issued by the Central Government, prescribing the conditions for application of **section 10(6)(i) of the 1961 Act**:

'In exercise of the powers conferred by **sub-clause (i) of clause (6) of section 10** of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby prescribes the following conditions for the exclusion from the total income of an individual, not being a citizen of India (hereinafter called "employee") of the moneys from the value of any free or concessional passage received by or due to him from his employer for himself, his spouse and children in connection with his proceeding on home leave out of India, namely:—

- (1) In determining whether a particular passage of the spouse or a child has been taken in connection with the home leave of the employee the passage taken together with that of the employee, or those immediately preceding or following his own passage within a period of not more than 6 months either way, shall be taken into consideration.
- (2) An employee shall be entitled to exemption under item (a) of clause (6)(i) of section 10 of the said Act, only if the concessions are availed of on the occasion of his proceeding on home leave out of India. He shall not be entitled to exemption in respect of any amount paid to him in consideration of his refraining from proceeding on home leave.
- (3) Mid-term passages granted to the employee's spouse and children in addition to the home leave passage due to and actually availed of by the employee according to the conditions of his service as entered in the service agreement or the leave rules of the employer, shall not be eligible for exclusion.
- (4) Passage moneys reimbursed to the employee in respect of inward journeys undertaken by the children studying abroad and their journeys out of India, shall not be eligible for exclusion.

2. This notification shall come into force on the 1-4-1977.'

The Finance (No. 2) Act, 1977 (29 of 1977) has **inserted (w. r. e. f. 1-4-1972) item (aa) in section 10(6)(i) of the 1961 Act** to provide exemption in respect of passage moneys or the value of any free or concessional passage received by or due to an individual who is not an Indian citizen from his employer, for his children having full time education in any educational institution outside India, in connection with their proceeding to India during vacation. This exemption is available in respect of passage moneys or the value of free or concessional passage received by or due to foreign employees in connection with their children proceeding to India during vacation. As the return journey of the children after the end of their vacation in India is necessarily connected with their visit to India, the passage moneys or the value of free or concessional passage for such return journey will be in connection with the children proceeding to India during vacation. Thus, exemption under this provision will be available not only in respect of passage moneys or the value of free or concessional passage for the journey to India, but would also extend in respect of the passage moneys for the journey back to the foreign country in which the children of the individual are having full time education. However, this provision has been **omitted (w. e. f. 1-4-1999)** by the **Finance (No. 2) Act, 1998**.

Omission of section 10(6)(i) of 1961 Act.—**The Finance Act, 2002** (20 of 2002) has **omitted** the provisions of **section 10(6)(i) with effect from 1-4-2003**.

Thus, the exemption under section 10(6)(i) of the 1961 Act was available between 1-4-1962 and 31-3-2003.

Exemption in respect of remuneration received by specified non-Indian citizen for services rendered in India for an approved purpose [s. 10(6)(via) of 1961 Act].—This sub-clause, inserted by the **Taxation Laws (Amendment) Act, 1975** (41 of 1975), with effect from 1-10-1975, amends section 10 of the 1961 Act so as to grant exemption to the remuneration received by a non-Indian citizen, who is either an employee of, or a consultant to, an approved foreign association or institution or a body established solely for philanthropic purposes, for services rendered in India for a purpose which has been approved by the Central Government.

Omission of section 10(6)(via) of 1961 Act.—Section 10(6)(via) has been omitted (w. e. f. 1-4-1999) by the **Finance (No. 2) Act, 1998** (21 of 1998). Thus, this section 10(6)(via) was operative between 1-10-1975 and 31-3-1999.

Exemption in respect of remuneration to non-resident foreign technicians chargeable under the head “Salaries” for services commencing before 1-4-1971 [s. 10(6)(vii) of 1961 Act].—The object of the enactment of section 10(6)(vii) of the 1961 Act is to attract and make available to indigenous industries the special knowledge and experience of foreign technicians [*CIT v. E. Hiller*, (1977) 108 ITR 493 (Bom)]. Sub-clause (vii) relates to the exemption from tax of the remuneration of non-resident foreign technicians employed in India [*Addl. CIT v. Brakes India Ltd.*, (1979) 118 ITR 820, 824 (Mad), **affirmed in** *CIT v. Brakes India Ltd.*, (1993) 201 ITR 647 (SC)]. The service may be rendered to the Government or a local authority or any corporation set up under any special law or in any business carried on in India. In order to enjoy the exemption, the contract of service of the technician must have been approved⁴ by the Central Government, originally, before the commencement of his service. **The Finance Act, 1964** (5 of 1964), extended the period, within which such approval could be obtained, to a period of one year from the commencement of his service. For this purpose, “technician” means a person having specialized knowledge and experience (i) in industrial or business management techniques [the words “management techniques” qualifies both “industrial” as well as “business”—see, *CIT v. Mosanobu Nakai*, (1974) 93 ITR 414 (Ker) holding that a skipper of a fishing trawler is not a “technician”]; and (ii) in constructional or manufacturing operations, or in mining or in the generation or distribution of electricity or any other form of power. Besides having the necessary knowledge and experience, the technician should be employed in a capacity in which such specialized knowledge and experience are actually utilized. For technician of class (i), the exemption is available in respect of the remuneration due to or received by such technician during the period of 6 months commencing from the date of his arrival in India. For technician of class (ii), the exemption from tax is available in respect of the remuneration due to or received by him for the first 36 months from the date of his arrival in India. If such technician continues to remain in employment in India beyond that period, and the tax on his salary income is paid by his employer, the technician is further entitled to an exemption in respect of the prerequisite represented by the amount of tax so paid, originally, for a period of 24 months. By **the Finance Act, 1965** (10 of 1965), the latter period of 24 months has been extended to a period up to 60 months subject to the condition that the approval of the Central Government to the continuation of his employment in India beyond the initial 36 months has been obtained before the 1st day of October of the relevant assessment year. The amended provision is effective for and from the assessment year 1965-66. The expression “continues to remain in employment in India” cannot be interpreted as “continues to remain in the same employment in India”. All that is conveyed by the expression is that a foreign technician must continue to render his services by remaining in employment in India for 60 months next after the expiry of the initial period of 36 months [see, *CIT v. E. Hiller*, (1977) 108 ITR 493, 499 (Bom)]. Section 10(6)(vii)(a)(ii) of the 1961 Act refers to the employment of the foreign technician generally and nowhere it has been laid down that an employment within the meaning of that section would be confined to only one employment under one employer [*CIT v. J. Gestin*, (1986) 161 ITR 563 (Cal)].

However, if the approval of the Central Government in respect of the contract of service is not obtained, the non-resident foreign technician of class (ii) is entitled to an exemption in respect of the remuneration due to or received by him for a period of 365 days in all commencing from the date of his arrival in India regardless of whether the said period of 365 days falls within one financial year or more than one financial year [*CIT v. L. H. Hall*, (1980) 123 ITR 738 (Cal)].

In order to claim exemption under section 10(6)(vii) of the 1961 Act, a foreign technician must establish the existence of the relationship of master and servant between himself and the Government/local authority/business organization which engaged him for establishing the contract of service [*CIT v. G. Eroppino Giovanni : CIT v. P. Bozzini*, (1992) 196 ITR 618, 625 (Ker)]. In the facts of that case, it has been held that no exemption under section 10(6)(vii) of the 1961 Act was available in respect of taxes due by the foreign technicians (assesseees) paid by the Indian company under a collaboration agreement to which the foreign technicians were strangers and they were not employees of the Indian company.

4. In this regard, reference may be made to *Press Note*, dated 26-10-1966 which provided the procedure for obtaining approval and Board's O.M. F. No. 22/26/66-IT(AI), dated 16-11-1966.

In the facts of *Addl. CIT v. William Land*, (1982) 31 CTR (Del) 310, it has been held that the assessee was a foreign technician and was entitled to exemption under section 10(6)(vii) of the 1961 Act. Also see, *CIT v. George Dekiss*, (1996) 134 CTR (Del) 599, 600. As long as the approval order of the Government of India was not revoked, it was not open to the authorities to claim that assessee-chef was not a technician [*Air India v. V.K. Srivastava*, CIT, (1995) 213 ITR 739 (Bom)].

Ceiling provided under section 40A(5) of the 1961 Act was not applicable to extent of remuneration that was exempt under section 10(6)(vii) of the 1961 Act or to extent of tax payable to employees by employer which was exempt under section 10(6)(vii) of the 1961 Act [*CIT v. Indo National Ltd.*, (1999) 239 ITR 526 (Mad)].

Reference may also be made to *CIT v. G.T. Fields*, SLP (Civil) No. 2415 of 1995: (1995) 212 ITR (St.) 370 (SC).

The Taxation Laws (Amendment) Act, 1970 (42 of 1970), has, however, limited the benefit of the exemption under this sub-clause to technicians whose employment has commenced from a date before 1-4-1971. For technicians taking up employment on or after 1-4-1971, a **new sub-clause (viiia)**, has been enacted.

Omission of section 10(6)(vii) of 1961 Act.—Section 10(6)(vii) of the 1961 Act has been omitted by the Finance Act, 1993 (38 of 1993), with effect from 1-4-1993.

It may be remembered that exemption under section 10(6)(vii) of the 1961 Act was available to certain foreign technicians on the remuneration received by them for services commencing before 1-4-1971. As the exemption was available for a maximum period of 8 years, these provisions were no longer necessary and, therefore, the same have been omitted.

Exemption in respect of remuneration to non-resident foreign technicians chargeable under the head “Salaries” for services commencing between 1-4-1971 and 31-3-1993 [s. 10(6)(viiia) of 1961 Act].—Section 10(6)(viiia) of the 1961 Act has been inserted by the Taxation Laws (Amendment) Act, 1970 (42 of 1970), in order to fill up the gap created as a result of amendment, by the same Act, of sub-clause (vii), limiting its field of operation to such technicians only who have taken up employment in India before 1-4-1971. The term “technician”, for the purposes of the new sub-clause (viiia), means a person having specialised knowledge and experience in—

- (i) constructional or manufacturing operations, or in mining or in the generation of electricity or any other form of power, or
- (ii) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building; or
- (iii) (w. e. f. 1-6-1979) such other field as the Central Government may, having regard to the availability of Indians having specialized knowledge and experience therein, the needs of the country and other relevant circumstances, by notification in the Official Gazette, specify. In this regard, the Central Government has specified the following fields:—
 - (1) Grading and evaluation of diamonds for diamond export or import trade [Notification No. SO 437(E), dated 4-6-1980];
 - (2) Cookery [Notification No. SO 803(E), dated 11-10-1989]; and
 - (3) Information technology including computer architecture systems platforms and associated technology, software development process and tools [Notification No. SO 235(E), dated 25-3-1992].

In order to be eligible to the benefits of sub-clause (viiia),—

- (i) the technician must be rendering service in India in a capacity in which his specialized knowledge and experience in any of the spheres stated above are actually utilized;
- (ii) such services must have commenced on a date on or after 1-4-1971;
- (iii) employment must be by or under the Government or a local authority or a corporation set up under any special law or any approved institution or body established in India for carrying on scientific research, or in any business carried on in India. **Rule 16A** of the 1962 Rules specifies the prescribed authority [i.e., (w. e. f. 6-1-1985) the Secretary, Department of Scientific and Industrial Research, Government of India] to approve any institution or body established for scientific research for the purposes of section 10(6)(viiia) of the 1961 Act;
- (iv) the technician was not resident in India in any of the four financial years immediately preceding the financial year in which he arrived in India. However, the Central Government has been empowered, by insertion of a **proviso** in sub-clause (viiia) before the *Explanation* by the **Direct Taxes (Amendment) Act, 1974** (26 of 1974), **with effect from 1-4-1973**, to waive this condition in the case of technicians who are employed in India for designing, erection or commissioning of machinery or plant or supervising activities connected therewith, if it considers it necessary or expedient to do so in the public interest; and

- (v) the contract of his service in India is approved⁵ by the Central Government on an application made by him in this behalf either before the commencement, or during the first 6 months of the employment.

The requirements in terms of the statutory provision for exemption under section 10(6)(viii) of the 1961 Act are: (i) that the assessee should qualify for the year of entry in terms of the assessee being not a resident in the year in which he is entering, and (ii) is a person who was not resident in all the four preceding financial years immediately preceding the financial year of his entry. That means if the assessee though he is not a resident in the year of entry, was a resident in any of the preceding four financial years, he cannot claim the benefit of the provision. It is for the assessee to claim the benefit from a given date so long as the exemption provision is available and the assessee otherwise qualifies for the initial exemption [*CIT v. J.G. Lovoie*, (2009) 319 ITR 419 (Karn)].

The exemption under **sub-clause (viii)** extends, in cases where such services commence from a date after 31-3-1971 but before 31-3-1988, to his remuneration, up to a maximum of ₹ 4,000 per month, for a period of 24 months commencing from the date of his arrival in India. If, however, the technician's salary exceeds ₹ 4,000 per month and his employer pays the tax on the excess of the salary over ₹ 4,000 per month for the said 24 months period, the tax-element so paid will enjoy exemption which would, otherwise, have been includible in the technician's salary as perquisite for the purpose of tax-levy. In case such technician continues in employment in India after the expiry of the said twenty-four months period with the approval of the Central Government obtained before 1st October of the relevant assessment year, and the tax on his remuneration is paid to the Government by his employer, the amount of tax so paid shall not, for a further period up to another 24 months next following, be charged to tax which it would have, but for this sub-clause, been includible in the technician's total salary income for the purposes of tax-levy.

As a result of the **amendment of sub-clause (viii) by the Finance Act, 1988** (26 of 1988) (**w. e. f. 1-4-1988**), the exemption under sub-clause (viii) has been limited, in cases where such services commence from a date after 31-3-1988, to the extent of the tax paid to the Central Government by the employer on the eligible technician's income chargeable under the head "Salaries"—

- for a period not exceeding 48 months commencing from the date of his arrival in India, if the approval of the Central Government for his employment in India for such period is obtained before the 1st October of the relevant assessment year, or
- for a period not exceeding 24 months commencing from the date of his arrival in India, if the approval of the Central Government of his employment in India for such period is not obtained before the 1st October of the relevant assessment year.

Thus, in effect, in the case of a foreign technician employed on or after 1-4-1988, the benefit of exemption from total income of remuneration up to an amount calculated at the rate of ₹ 4,000 per month for a period of 24 months due to or received by such a foreign technician has been withdrawn. However, the exemption in respect of the perquisite value of tax paid by the employer of such a foreign technician has been retained. The reason behind this is that the then existing provisions were against the avowed policy of achieving self-reliance in the field of science and technology particularly in view of the fact that India possesses the third largest pool of scientific and technical manpower.

As a result of the **amendments of section 10(6)(viii) of the 1961 Act by the Finance Act, 1992** (18 of 1992), **with effect from 1-6-1992**, the condition of approval by the Central Government of the contract of service of a foreign technician, or extension of his employment after a period of 24 months commencing from the date of his arrival in India has been **omitted** with effect from 1-6-1992.

As a result of the **amendment of section 10(6)(viii) of the 1961 Act by the Finance Act, 1993** (38 of 1993), **with effect from 1-4-1993**, the application of these provisions have been restricted to cases where services as a technician commence after 31-3-1988 but before 1-4-1993. In respect of services as technician commencing on or after 1-4-1993, the provisions of the newly inserted (**w. e. f. 1-4-1994**) section 10(5B) of the 1961 Act by the Finance Act, 1993 (38 of 1993), are apposite.

Application of section 293B of 1961 Act.—Section 293B of the 1961 Act applies also to an application under section 10(6)(viii) of the 1961 Act for approval of a contract of service with an individual who is not a citizen of India as a technician for the purpose of exemption from payment of tax and the Central Government has power under section 293B of the 1961 Act to condone the delay in an application for approval under section 10(6)(viii) of the 1961 Act [*Hughes Services v. Union of India*, (1992) 196 ITR 338, 339 (Del), **SLP dismissed**: (1992) 197 ITR (St.) 150-51 (SC)].

5. In this regard, reference may be made to *Press Note*, dated 31-12-1972 which provided the procedure for obtaining approval.

In *CIT v. Radomir Dzelatovic*, (1994) 206 ITR 320, 322 (Bom), it has been held that where, on an application having been made in time, an approval has been accorded, the same has to relate back to the date of the application. This view has been **followed in** *CIT v. Vitomir Vasiljickovic*, (1997) 138 Taxation 567 (Bom).

Non-applicability.—In the facts of *Orissa Synthetics Ltd. v. ITO*, (1993) 203 ITR 34, 40 (Ori), it has been held that the amount in question would not come under section 10(6)(viii) of the 1961 Act as the payment was not made to an individual technical expert but, on the other hand, was made to the seller under a collaboration agreement.

The pre-condition for claiming exemption under section 10(6)(viii) of the 1961 Act is that individual should be in the employment for carrying on scientific research or in any business carried on in India. In the instant case, it has been held that exemption under section 10(6)(viii) of the 1961 Act was not available to the assessee since assessee was deputed in India by his foreign employer to carry out some technical work for an Indian company and it could not be said that he was in employment with Indian company for business carried on in India [*CIT v. De Marchee Enrico*, (2005) 278 ITR 89 (All)].

Omission of section 10(6)(viii) of 1961 Act.—Section 10(6)(viii) of the 1961 Act has been **omitted (w. e. f. 1-4-1999) by the Finance (No. 2) Act, 1998** (21 of 1998).

Thus, section 10(6)(viii) of the 1961 Act was operative between 1-4-1971 and 31-3-1999.

Exemption in respect of any income chargeable under the head “Salaries” in case of a non-resident individual for services rendered as a professor or other teacher in an Indian University or other educational institution [s. 10(6)(ix) of 1961 Act].—Firstly, the provision exempted any income chargeable under the head “Salaries” received by or due to him during the 36 months commencing from the date of his arrival in India for service rendered as a professor or other teacher in a University or other educational institution. Secondly, where any such individual continues to remain in employment in India after the expiry of the 36 months aforesaid and the tax on his income chargeable under the head “Salaries” is paid by the University or other educational institution concerned to the Central Government, the provision also exempted the tax so paid for a period not exceeding 24 months following the expiry of the 36 months aforesaid. However, in either case, the following conditions are to be fulfilled, namely:—

- (i) such individual was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India; and
- (ii) his contract of service is approved by the Central Government—
 - (a) on or before the 1st day of October, 1964, in the case of a professor or other teacher whose service commenced before the 1st day of April, 1964;
 - (b) before the commencement of his service or within one year of such commencement, in any other case.

Omission of section 10(6)(ix) of 1961 Act.—Section 10(6)(ix) of the 1961 Act has been **omitted (w. e. f. 1-4-1999) by the Finance (No. 2) Act, 1998** (21 of 1998).

Thus, section 10(6)(ix) of the 1961 Act was operative between 1-4-1964 and 31-3-1999.

Exemption in respect of any sum due to or received by non-citizen individual for undertaking any research work in India [s. 10(6)(x) of 1961 Act].—The provision exempted any sum due to or received by him, during the 24 months commencing from the date of his arrival in India, for undertaking any research work in India, provided the following conditions are fulfilled, namely:—

- (a) the research work is undertaken in connection with a research scheme approved in this behalf by the Central Government on or before the 1st day of October of the relevant assessment year; and
- (b) such sum is payable or paid directly or indirectly by the Government of a foreign State or any institution or association or other body established outside India.

Omission of section 10(6)(x) of 1961 Act.—Section 10(6)(x) of the 1961 Act has been **omitted (w. e. f. 1-4-1999) by the Finance (No. 2) Act, 1998** (21 of 1998).

Thus, section 10(6)(x) of the 1961 Act was operative between 1-4-1964 and 31-3-1999.

Approval under sections 10(6)(ix) & (x) of 1961 Act to be accorded by Ministry of Education, clarification.—As per Board's F. No. 24/52/64-IT (A1), dated 8-10-1964, it has been decided that the necessary approval on behalf of the Central Government shall be accorded by the Ministry of Education, and that Ministry has been requested to forward two copies of the letters of approval to the Board. One copy of the letter of approval received from the Ministry of Education will be forwarded to the CIT concerned for onward transmission to the Income-tax Officer concerned for necessary action. In this regard, reference may also be made to *Press Note*, dated 26-10-1966.

CERTAIN INCOMES OF AN INDIVIDUAL WHO IS ASSIGNED TO DUTIES IN INDIA IN CONNECTION WITH ANY TECHNICAL ASSISTANCE PROGRAMME AND PROJECT OR OF A CONSULTANT OR MEMBER OF FAMILY OF SUCH INDIVIDUAL ACCOMPANYING HIM TO INDIA [Ss. 10(8), 10(8A), 10(8B) & 10(9)]

Exemption in case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects [s. 10(8) of 1961 Act].—The provisions of section 10(8) of the 1961 Act apply only in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State. The following incomes of that individual is exempt under section 10(8) of the 1961 Act:—

- (a) Remuneration received by him, directly or indirectly, from the Government of that foreign State for such duties; and
- (b) Any other income which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State.

However, it is to be noted that the terms of such an agreement provide for the exemption given by section 10(8) of the 1961 Act.

In the facts of *CIT v. Prem Bandhu Gupta*, (1985) 156 ITR 737 (Del), the salary received by the assessee, who was an Indian national, under the Technical Cooperation Assistance Programme and Project from the Agency for International Development, USA, was held eligible for the benefit of exemption under section 10(8) of the 1961 Act.

Reference may also be made to *Dr. Jyoti Vajpayee v. CIT*, (2017) 392 ITR 518, 537 (All) = (2017) 292 CTR (All) 175.

Introduction of sections 10(8A) & 10(8B) under 1961 Act.—*The Finance (No. 2) Act, 1991.*—By the **Finance (No. 2) Act, 1991** (49 of 1991), **sections 10(8A) & 10(8B)** have been **inserted (w. r. e. f. 1-4-1991)**.

The scope and effect of the above insertions have been elaborated in the following portion of the *Departmental Circular No. 621, dated 19-12-1991*:—

‘Exemption from income-tax in India of remuneration or fees received by non-resident consultants and their foreign employees.—**13.** Under the existing provisions of the Income-tax Act, individuals assigned to duties in India under a bilateral co-operative technical assistance programme are exempted from Indian income-tax in respect of the remuneration received by them directly or indirectly from the foreign Government. The exemption from Indian income-tax also extends to other incomes of such individuals accruing or arising outside India if such incomes are subject to income-tax or social security tax levied by the foreign Government. This exemption is not available on remuneration, etc., received by individuals engaged as consultants by the World Bank and other multilateral agencies for rendering assistance under technical assistance grant agreements, directly or indirectly, from such grant.

13.1 Since such grant agreements usually stipulate that no portion of the grant should be utilized towards the tax effort of the recipient country, section 10 of the Income-tax Act, 1961, has been amended in order to exempt from income-tax in India the remuneration or fee received by non-resident consultants and their foreign employees in cases where such consultants have been engaged by the World Bank or any other multilateral agency for rendering assistance under technical assistance grant agreement, and such remuneration, etc., is paid, directly or indirectly, from such grant. This exemption is also available to consultants or their employees who, being Indian citizens, are not ordinarily resident in India. The agreement relating to the engagement of the consultants and to the contract of service of their employees have to be approved by the prescribed authority.

13.2 This amendment takes effect from 1-4-1991, and will, accordingly, apply in relation to assessment year 1991-92 and subsequent years. [Section 5].’

Legislative amendment under 1961 Act.—**I. The Finance Act, 2022.**—By the **Finance Act, 2022** (6 of 2022), **proviso** has been **inserted (w. e. f. 1-4-2023)** to the provisions each of the **sections 10(8), 10(8A), 10(8B) & 10(9)**.

The scope and effect of the above insertions have been elaborated in the following portion of the *Departmental Circular No. 23/2022, dated 3-11-2022*:—

‘8. Withdrawal of exemption under clauses (8), (8A), (8B) and (9) of section 10.—**8.1** Prior to amendments made *vide* FA 2022, clause (8) of the section 10 of the Act provided for exemption to the income of an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects. Such co-operative technical assistance programmes and projects were required to

be in accordance with an agreement entered by the Central Government and the Government of a foreign state (the terms thereof provide for the exemption given by this clause).

8.2 Exemption was provided to both (i) the remuneration received by the individual from the foreign state for such duties and (ii) any other income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual was required to pay any income or social security tax to the Government of the foreign state.

8.3 Clause (8A) of the said section provided for exemption on the remuneration or fee received by a consultant, directly or indirectly out of the funds made available to an international organization (agency) under a technical assistance grant agreement between the agency and the Government of a foreign state. The said clause also provided exemption to such consultant in respect of any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the consultant was required to pay income or social security tax to the Government of the country of his or its origin.

8.4 For the purposes of this clause, if the consultant was an individual, he was required to be a foreign citizen or in case he was an Indian citizen he should be not ordinarily resident in India. In case the consultant was not an individual, such person was required to be non-resident.

8.5 Consultant was required to be engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project. Such technical assistance programme or projects were required to be in accordance with an agreement entered into by the Central Government and the agency and the agreement relating to the engagement of the consultant is required to be approved by the prescribed authority.

8.6 Clause (8B) of the said section provided for exemption to an individual who is an employee of the consultant as referred to in clause (8A) of section 10. Such individuals were those who were assigned duties in India in connection with any technical assistance programme and project. These technical assistance programmes and projects were required to be in accordance with an agreement entered into by the Central Government and the agency.

8.7 The exemption was provided to the remuneration received by such individual, directly or indirectly, for such duties from any consultant referred to in clause (8A) of section 10. Exemption was also provided to any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual was required to pay income or social security tax to the country of his origin.

8.8 The individual was required to be the employee of the consultant. He was to be a foreign citizen or if he is an Indian citizen, he was required to be not ordinarily resident in India. It was also required that the contract of service of the employee was approved by the prescribed authority before the commencement of his service.

8.9 Clause (9) of the said section provided for exemption to the income of the family members of any individual or consultant as referred in clause (8), clause (8A) and clause (8B), who accompanied such individual or consultant to India. The exemption is provided to income accruing or arising outside India (which was not deemed to accrue or arise in India), in respect of which such member was required to pay any income or social security tax to the Government of that foreign state or country of origin of such member.

8.10 The exemptions as provided under the above-mentioned clauses have outlived their utility in the era of simplification of tax laws and where exemptions and tax incentives are being phased out as a matter of stated policy of the Government. Further, if under a tax treaty, India gets a right to tax a particular income and the other country is expected to then relieve double taxation by exemption or credit method, providing exemption by India amounts to surrender of right of taxation by India in favour of the other country.

8.11 Accordingly, FA 2022 has amended clauses (8), (8A), (8B) and (9) of section 10 of the Act to provide that the provisions of the said clauses shall not apply to remuneration, fee or income of the previous year relevant to the assessment year beginning on the 1st day of April, 2023 and subsequent assessment years.

8.12 Applicability: These amendments will be effective from the 1st April, 2023 and accordingly, apply in relation to the assessment year 2023-24 and subsequent assessment years.⁷

Exemption in case of a consultant engaged for rendering technical services in India in connection with any technical assistance programme or project [s. 10(8A) of 1961 Act].—The provisions of section 10(8A) of the 1961 Act apply only in the case of a consultant engaged by an international organization (hereinafter referred to as 'agency') for rendering technical services in India in connection with any technical assistance programme or project, provided the following conditions are fulfilled:—

- (1) Technical assistance is in accordance with an agreement entered into by the Central Government and the agency; and

- (2) Agreement relating to the engagement of the consultant is approved by the prescribed authority prescribed under **Rule 16B of 1962 Rules** [i.e., the Additional Secretary, Department of Economic Affairs in the Ministry of Finance, Government of India in concurrence with the Member (Income-tax) of the CBDT].

Such consultant may be:—

- (i) any individual, who is not an Indian citizen; or
- (ii) any individual, being an Indian citizen, but not an ordinarily resident in India; or
- (iii) any other non-resident person (excluding individual).

The following incomes of that consultant is exempt under section 10(8A) of the 1961 Act:—

- (a) Remuneration or fee received by him or it, directly or indirectly, out of the funds made available to the agency under a technical assistance grant agreement between the agency and the Government of a foreign State; and
- (b) Any other income which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social security tax to the Government of the country of his or its origin.

Reference may be made to *LEA International Ltd. v. Asst. DIT*, (2015) 55 taxmann.com 407 (Del).

Exemption in case of a consultant's employee who is assigned to duties in India in connection with any co-operative technical assistance programme and project [s. 10(8B) of 1961 Act].—The provisions of section 10(8B) of the 1961 Act apply only in the case of an individual who is an employee of the consultant referred to in section 10(8A) of the 1961 Act, and who is either not an Indian citizen, or an Indian citizen but not an ordinarily resident in India. Such individual is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the international organization (hereinafter referred to as 'agency'). The following incomes of that consultant's employee is exempt under section 10(8B) of the 1961 Act:—

- (a) Remuneration received by him, directly or indirectly, for such duties from any consultant referred to in section 10(8A) of the 1961 Act; and
- (b) Any other income which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin.

It is to be noted that the contract of service of such individual is approved by the prescribed authority prescribed under **Rule 16B of 1962 Rules** [i.e., the Additional Secretary, Department of Economic Affairs in the Ministry of Finance, Government of India in concurrence with the Member (Income-tax) of the CBDT] before the commencement of his service for claiming exemption.

Exemption in respect of income of any family member of any individual referred to in sections 10(8)/(8A)/(8B) [s. 10(9) of 1961 Act].—The provisions of section 10(9) of the 1961 Act exempts the income of any member of the family of any such individual as is referred to in section 10(8) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State.

With the insertion of provisions of sections 10(8A) and 10(8B) of the 1961 Act **with effect from 1-4-1991** by the **Finance (No. 2) Act, 1991**, the above provisions of section 10(9) of the 1961 Act have also been extended to the family members of any such individual referred to in sections 10(8A) as well as 10(8B) of the 1961 Act. Accordingly, exemption is available if such member is required to pay any income or social security tax to the Government of the country of origin of such member.

Sunset clause for withdrawal of exemptions under sections 10(8), 10(8A), 10(8B) & 10(9) of 1961 Act.—As a result of amendments (w. e. f. 1-4-2023) in sections 10(8), 10(8A), 10(8B) & 10(9) of the 1961 Act by the **Finance Act, 2023** (8 of 2023), a sunset clause has been enacted in each section to the effect that exemption shall not apply to such remuneration and other income, as the case may be, of the previous year relevant to the assessment year 2023-24 and subsequent assessment years.

PAYMENTS MADE TO VICTIMS OF BHOPAL GAS LEAK DISASTER [S. 10(10BB)]

Introduction under 1961 Act.—*The Finance Act, 1992.*—By the **Finance Act, 1992** (18 of 1992), section 10(10BB) has been inserted (w. e. f. 1-4-1992).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 636, dated 31-8-1992*:—

'Exemption of compensation received by victims of Bhopal Gas Leak Disaster.—22. Pursuant to the decision⁶ of the Supreme Court, victims of Bhopal Gas Leak Disaster are to be paid compensation in accordance with the provisions of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985⁷. With a view to providing relief to these persons, a new clause (10BB) has been inserted by the Finance Act, 1992, in section 10 of the Income-tax Act providing for exemption from income-tax to such compensation. However, compensation received by an assessee in respect of an expenditure which has been incurred and allowed as a deduction from taxable income, will not be exempt from income-tax.

22.1 This clause comes into effect from 1-4-1992, and, accordingly, applies in relation to assessment year 1992-93 and subsequent assessment years. [Section 4]’.

Exemption in respect of payments made to victims of Bhopal Gas Leak Disaster.—Section 10(10BB) of the 1961 Act, inserted for and from assessment year 1992-93, exempts any payments made under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (21 of 1985), and any scheme framed thereunder [*i.e.*, the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985].

However, exemption shall not be available in respect of payment made to any assessee in connection with the Bhopal Gas Leak Disaster to the extent such assessee has been allowed a deduction under the 1961 Act on account of any loss or damage caused to him by such disaster.

EXCHANGE RISK PREMIUM INCOME RECEIVED BY A PUBLIC FINANCIAL INSTITUTION FROM ANY PERSON BORROWING FOREIGN CURRENCY [Omitted s. 10(14A)]

Introduction under 1961 Act.—The Finance Act, 1989.—By the Finance Act, 1989 (13 of 1989), **section 10(14A)** was inserted (**w. e. f. 1-4-1989**).

For the scope and effect of the above insertion, reference may be made to paras. 11 to 11.8 of the *Departmental Circular No. 550, dated 1-1-1990*.

Exemption in respect of exchange risk premium received by a public financial institution from any person borrowing foreign currency from such institution.—This section 10(14A) of the 1961 Act granted exemption in respect of any income received by a *public financial institution* [as defined in *Explanation (b)* to section 10(23D) of the 1961 Act] as *exchange risk premium* [*i.e.*, a premium paid by a person borrowing foreign currency from a public financial institution to cover the risk which may be borne by such institution on account of fluctuations in exchange rate of foreign currencies borrowed by such institution] from any person borrowing foreign currency from such institution, provided the amount of such premium is credited by such institution to a fund specified under section 10(23E) of the 1961 Act.

Omission of section 10(14A) of 1961 Act.—The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), **section 10(14A)** of the 1961 Act has been **omitted** (**w. e. f. 1-4-2003**).

For the scope and effect of the above omission, reference may be made to paras. 11 to 11.4 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

PAYMENT OF INTEREST, ETC. [Omitted provisions of s. 10(15)]

Legislative amendments under 1961 Act.—I. The Finance Act, 1982.—By the Finance Act, 1982 (14 of 1982), **section 10(15)(iib)** has been **inserted** (**w. e. f. 1-4-1983**).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 346, dated 30-6-1982*, as follows:—

‘11. Exemption from income-tax in respect of interest on new capital investment bonds.—11.1 With a view to providing a stimulus for increased savings by assesseees, the Finance Act, 1982, has inserted a new sub-clause (*iib*) in clause (15) of section 10 of the Income-tax Act to provide for exemption from income-tax of the interest on such capital investment bonds as the Central Government may, by notification* in the Official Gazette, specify in this behalf. It may be noted that the interest on the capital investment Bonds will be exempted from income-tax without any ceiling limit.

11.2 This provision will take effect from 1st April, 1983, and will accordingly apply in relation to the assessment year 1983-84, and subsequent years. [Section 4(d) of the Finance Act, 1982]’.

6. The reference is to *Union Carbide Corporation v. Union of India*, (1989) 1 SCC 674 (SC), wherein the settlement of 470 million US\$ received the imprimatur of the Supreme Court in its orders dated 14-2-1989. The reasons for the orders were stated in *Union Carbide Corporation v. Union of India*, (1989) 3 SCC 38 (SC). It is also to be noted that in 2010, the Government decided to review (*via curative petition*) the above compensation after an outcry over Union Carbide's Executives received just 2-year prison sentences with minor fines. In response, the Supreme Court in March, 2023 held that the question of compensation can't be raked up 3 decades after the settlement.

7. The validity of this Act has been upheld in *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 (SC).

* For such notification, see, Notification No. GSR 413(E), dated 11th June, 1982 [(1983) 141 ITR (St.) 1], whereby 7% Capital Investment Bonds have been so specified.

II. The Finance Act, 1983.—By the **Finance Act, 1983** (11 of 1983), **section 10(15)(iib)** has been **amended (w. e. f. 1-4-1983)**.

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 372, dated 8-12-1983*, as follows:—

‘14. Exemption in respect of interest on Capital Investment Bonds.—14.1 Section 10(15)(iib) inserted in the Income-tax Act by the Finance Act, 1982, with effect from 1st April, 1983, provided exemption in respect of interest on such Capital Investment Bonds as the Central Government may, by notification in the Official Gazette, specify in this behalf. The Capital Investment Bonds issued under Notification No. F-4(1)-W&M/82, dated 11th June, 1982[‡], of the Ministry of Finance (Department of Economic Affairs), was specified by the Central Government for the purposes of the aforesaid provision under Notification No. GSR 413(E)[†] of the same date issued by the Ministry of Finance (Department of Revenue). Under the notification issued by the Department of Economic Affairs, the Capital Investment Bonds could be held only by an individual in his or her name or on behalf of a minor, or jointly with another individual. Later on, it was decided that Hindu undivided families may also be allowed to invest in the said Bonds. Accordingly, section 10(15)(iib) of the Act has also been amended by the Finance Act, 1983, to provide that exemption from income-tax in respect of interest on Capital Investment Bonds will be available to individuals and also to Hindu undivided families.

14.2 The amendment takes effect from 1st April, 1983, that is, the date from which this provision was inserted by the Finance Act, 1982, and will, accordingly, apply in relation to the assessment year 1983-84 and subsequent years. [*Section 5(c)(i) of the Finance Act, 1983*]

* * *

15.6 The aforesaid amendments take effect from 1st April, 1983, and will, accordingly, apply in relation to the assessment year 1983-84 and subsequent years. [*Section 5(c)(ii)(1), (2), (3) and (4) of the Finance Act, 1983*].’

III. The Direct Tax Laws (Amendment) Act, 1989.—By the **Direct Tax Laws (Amendment) Act, 1989** (3 of 1989), **section 10(15)(iid)** has been **inserted (w. e. f. 1-4-1989)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 559, dated 4-5-1990*, as follows:—

‘5. Exemption from income-tax in respect of interest on Non-repatriable NRI Bonds purchased by non-resident Indians.—5.1 Insertion of a new sub-clause (iid) in clause (15) of section 10.—A number of facilities, including fiscal concessions, have been extended to the non-resident Indians (NRIs) for facilitating investments by them in India. The Government launched on 14th November, 1988, through the State Bank of India, a scheme for non-repatriable NRI Bonds, 1988, to be purchased by non-resident Indians in foreign exchange. The maturity period of these Bonds was 7 years and these carried an interest rate higher than that applicable to the repatriable foreign currency non-resident deposits. To encourage investments by NRIs in these Bonds, it was also decided that appropriate exemptions under the Income-tax, Wealth-tax and Gift-tax Acts should also be provided to these Bonds.

5.2 The Amending Act, 1989, has, therefore, inserted a new sub-clause (iid) in clause (15) of section 10 of the Income-tax Act to provide that interest income arising to an individual, being a non-resident Indian, from such bonds, as are notified by the Central Government in the Official Gazette, shall not be included in the total income of such individual. However, to be entitled to this exemption and to have continuity thereof, the following conditions must be satisfied:

- (i) The Bonds should be purchased by a non-resident Indian in foreign exchange.
- (ii) The interest and principal received in respect of such bonds, whether on their maturity or otherwise, should not be allowed to be taken out of India.
- (iii) The Bonds should not be encashed before their maturity. In case the Bonds are encashed prior to the date of maturity, the exemption under the sub-clause shall cease to apply from the assessment year relevant to the previous year in which such Bonds are encashed.

5.3 It has, however, been provided that even if the non-resident Indian, having purchased such Bonds in a previous year, becomes a resident in a subsequent also be available to a nominee or survivor of the non-resident Indian (*sic.*). Further, the benefit shall also be available to the donee individual, if the non-resident Indian gifts away the bonds to him.

5.4 It has also been provided that for the purposes of this exemption, the expression “non-resident Indian” shall have the meaning assigned to it in section 115C(e).

[‡] See, (1982) 137 ITR (St.) 17.

[†] See, (1983) 141 ITR (St.) 1.

5.5 It may be mentioned that in exercise of the powers conferred by the said new sub-clause (iid), the Central Government notified the "NRI, Bonds, 1988" issued by the State Bank of India for purposes of exemption under the said sub-clause, *vide* Notification No. S.O. 847(E), dated 24th October, 1989, issued under No. 8474/F. No. 132/1/89-TPL.

5.6 Corresponding exemptions under the Wealth-tax and Gift-tax Acts are discussed in Paras 11.2 and 20 of these Explanatory Notes.

5.7 These amendments come into force with effect from 1st April, 1989, and will, accordingly, apply to the assessment year 1989-90 and subsequent assessment years. [*Clause (b) of section 4 of the Amending Act, 1989*].

IV. The Finance Act, 1990.—By the Finance Act, 1990 (12 of 1990), section 10(15)(v) has been inserted (w. r. e. f. 1-4-1989).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 572, dated 3-8-1990, as follows:—

'Exemption in respect of interest on securities held by the Registrar, Supreme Court, in Reserve Bank's SGL Account No. SL/DH 048.—**16.** The amount of US \$ 470 million paid by the Union Carbide Corporation and the Union Carbide India Limited on the directions of the Supreme Court as compensation for the victims of the Bhopal gas leak disaster stands deposited in the Reserve Bank of India to the credit of the Registrar, Supreme Court, in the form of certain Government securities. Under the provisions of the Income-tax Act, the interest payable on the aforesaid securities is taxable. However, it was not intended to levy tax on the interest accruing on the amount of the said compensation for the victims of the Bhopal gas leak disaster. Accordingly, a new sub-clause (v) in clause (15) of section 10 of the Income-tax Act has been inserted to provide for exemption from income-tax in respect of interest on securities held by the Registrar, Supreme Court, in Reserve Bank's Account No. SL/DH 048.

16.1 This amendment will take effect from the 1st April, 1989, and will accordingly, apply in relation to the assessment year 1989-90 and subsequent years. [*Section 5 of the Finance Act, 1990*].

V. The Finance Act, 1993.—By the Finance Act, 1993 (38 of 1993), section 10(15)(v) has been amended (w. r. e. f. 2-11-1992).

The scope and effect of the above amendment have been elaborated in the following portion of the Departmental Circular No. 657, dated 30-8-1993, as follows:—

'Modification of the provisions of section 10(15)(v).—**18.** Section 10(15)(v) of the Income-tax Act provided income-tax exemption in respect of interest on securities held by the Registrar, Supreme Court, in Reserve Bank's SGL Account No. SL/DH 048. The amount of US \$ 470 million paid by the Union Carbide Corporation and the Union Carbide India Limited on the directions of the Supreme Court as compensation for the victims of the Bhopal gas leak disaster stands deposited in the aforesaid account, in the form of certain Government securities.

18.1 On the directions of the Supreme Court, the name of the account-holder of the said account had been changed from Registrar, Supreme Court to Welfare Commissioner, Bhopal Gas Victims, Bhopal, with effect from 2nd November, 1992.

18.2 The Act, therefore, changes the name of the holder of the said account from "Registrar, Supreme Court" to "Welfare Commissioner, Bhopal Gas Victims, Bhopal" in section 10(15)(v) of the Income-tax Act.

18.3 This amendment takes effect from 2nd November, 1992. [*Section 3*].

VI. The Finance Act, 1995.—By the Finance Act, 1995 (22 of 1995), section 10(15)(v) has been substituted (w. e. f. 1-4-1995).

The scope and effect of the above substitution have been elaborated in the following portion of the Departmental Circular No. 717, dated 14-8-1995, as follows:—

'15. Enlarging scope of income-tax exemption on interest on deposits for benefit of victims of the Bhopal gas leak disaster.—**15.1** Sub-clause (v) of clause (15) of section 10 of the Income-tax Act, provides income-tax exemption in respect of interest on securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in Reserve Bank's SGL Account No. SL/DH 048. Recently, in terms of an order of the Supreme Court to finance the construction of a hospital at Bhopal to serve the victims of the gas leak, the shares of the Union Carbide India Limited have been sold. The sale consideration reserved for construction has been deposited with State Bank of India, Main Branch, Parliament Street, New Delhi, in Account Number 807/787. The interest on the aforesaid deposit and similar deposits which may be made in future, needs to be exempted from the levy of income-tax.

15.2 The Finance Act, 1995, therefore, substitutes sub-clause (v) of clause (15) of section 10, in order to enlarge the scope of the income-tax exemption by providing such exemption to interest on deposits for the

benefit of the victims of the Bhopal gas leak disaster held in such account, with the Reserve Bank of India or with a public sector bank, as the Central Government may, by notification in the Official Gazette, specify in this behalf. It is also being provided that such notification may be made either prospectively or retrospectively, but no retrospective effect may be given from a date earlier than 1st April, 1994. The expression “public sector bank” is proposed to be given the meaning assigned to it in the *Explanation* to clause (23D) of section 10.

15.3 The amendment will take effect from 1st April, 1995, and will, accordingly, apply, in relation to the assessment year 1995-96 and subsequent years. [Section 4]’.

VII. The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), the following amendments (w. e. f. 1-4-2003) have been made—

—**proviso to section 10(15)(iib)** has been inserted; and

—**4th proviso to section 10(15)(iia)** has been inserted.

For the scope and effect of the above insertions, *inter alia*, reference may be made to paras. 7 to 7.3 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

Exemption in respect of interest on notified Capital Investment Bonds to individuals or HUFs [s. 10(15)(iib) of 1961 Act].—The Finance Act, 1982 (14 of 1982) has inserted (w. e. f. 1-4-1983) section 10(15)(iib) of the 1961 Act [as amended by the Finance Act, 1983 (11 of 1983)] which exempts interest on 7% Capital Investment Bonds [notified *vide Notification No. SO 413(E), dated 11-6-1982*: (1983) 141 ITR (St.) 1] in the case of an individual or an HUF only.

The said 7% Capital Investment Bonds has been issued under *Notification No. F-4(1)-W&M/82 dated 11-6-1982*: (1982) 137 ITR (St.) 17, by the Ministry of Finance (Department of Economic Affairs).

Sunset clause for withdrawal of exemption under section 10(15)(iib) of 1961 Act in respect of such Capital Investment Bonds specified on or after 1-6-2002.—As a result of the insertion (w. e. f. 1-4-2003) of a new proviso in section 10(15)(iib) of the 1961 Act by the Finance Act, 2002 (20 of 2002), the Central Government shall not be empowered to specify such Capital Investment Bonds, for the purposes of section 10(15)(iib) of the 1961 Act, on or after 1-6-2002.

Exemption in respect of interest on notified bonds to NRIs or any individual [s. 10(15)(iia) of 1961 Act].—The Direct Tax Laws (Amendment) Act, 1989 (3 of 1989) has inserted (w. e. f. 1-4-1989) section 10(15)(iia) of the 1961 Act which exempts interest arising on certain notified bonds to any of the following:—

- (a) A non-resident Indian (NRI) [as defined in section 115C(e) of the 1961 Act], being an individual, owning such bonds.
- (b) Any individual owning such bonds by virtue of being a nominee or survivor of the NRI; or
- (c) Any individual to whom such bonds have been gifted by the NRI.

The notified bonds are:—

- (1) The NRI Bonds-1988 issued by the SBI [*vide Notification No. SO 847(E), dated 24-10-1989*].
- (2) The NRI Bonds (Second Series) issued by the SBI [*vide Notification No. SO 551(E), dated 27-7-1992*].

1st proviso to section 10(15)(iia) of the 1961 Act mandates that the aforesaid bonds are to be purchased only by an NRI in foreign exchange and the interest and principal received in respect of such bonds, whether on their maturity or otherwise, is not allowable to be taken out of India.

As per **2nd proviso to section 10(15)(iia)** of the 1961 Act, this exemption shall be available even where such an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year.

Exemption not available in case of pre-maturity.—In view of **3rd proviso to section 10(15)(iia)** of the 1961 Act, this exemption under section 10(15)(iia) of the 1961 Act shall not apply where the bonds are encashed in a previous year prior to their maturity by an individual who is so entitled.

Sunset clause for withdrawal of exemption under section 10(15)(iia) of 1961 Act in respect of such bonds specified on or after 1-6-2002.—As a result of the insertion (w. e. f. 1-4-2003) of **4th proviso in section 10(15)(iia)** of the 1961 Act by the Finance Act, 2002 (20 of 2002), the Central Government shall not be empowered to specify such bonds, for the purposes of section 10(15)(iia) of the 1961 Act, on or after 1-6-2002.

Exemption in respect of interest on securities or deposits for the benefit of Bhopal gas leak disaster victims [s. 10(15)(v) of 1961 Act].—Section 10(15)(v) of the 1961 Act, which has been inserted (w. r. e. f. 1-4-1989) by the Finance Act, 1990 (12 of 1990), provides the following exemptions:—

- (a) Interest on securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal [(up to 1-11-1992) Registrar, Supreme Court] in the Reserve Bank's SGL Account No. SL/DH 048.
- (b) (**w. e. f. 1-4-1995**) Interest on deposits for the benefit of the victims of the Bhopal gas leak disaster held in Account Nos. 807/787 and 57/078049 with the State Bank of India, Main Branch, Parliament Street, New Delhi, in the name of Sir Ian Percival, Sole Trustee, Bhopal Hospital Trust [vide Notification No. SO 635(E), dated 12-7-1995].

It is also to be noted that such deposits may be held in such account with the RBI or with any other *public sector bank* [as defined in Explanation (a) to section 10(23D) of the 1961 Act], as the Central Government may specify by notification, whether prospectively or retrospectively, but in no case earlier than 1-4-1994.

AMOUNT RECEIVED AS PRIVY PURSE & EX GRATIA PAYMENTS ON ITS ABOLITION **[Omitted ss. 10(18A) & 10(19)]**

Exemption in respect of amount received as privy purse.—Section 10(19) of the 1961 Act, as it stood between 1-4-1962 and 1-4-1973, exempted any amount received by the Ruler of an Indian State as privy purse under Article 291 of the Constitution of India [see, *CIT v. Yuvrani Premkumari*, (1979) 117 ITR 908 (Guj)].

The maintenance allowance received by the wife of the Ruler out of Privy Purse is not income assessable in the hands of the wife [*S.S. Laxmibaisaheb v. CIT*, (1984) 150 ITR 289 (Bom)]. Also see, *Arvind Singh v. CIT*, (1986) 160 ITR 908 (Raj); *CIT v. Maharana Bhagwat Singh*, (1990) Taxation 98(3)-488 (Raj); *H.H. Birad Kanwar v. CIT*, (1989) 175 ITR 30 (Raj) (amount received by the mother).

This **Article 291** of the Constitution of India was **omitted by the Constitution (26th Amendment) Act, 1971, with effect from 28-12-1971**. Resultantly, this section 10(19) of the 1961 Act had also been **omitted by the Rulers of Indian States (Abolition of Privileges) Act, 1972 (54 of 1972), with effect from 2-4-1973**.

The Constitution (26th Amendment) Act, 1971, whereby, *inter alia*, privy purses were abolished, has been held to be valid in its entirety in *Raghunathrao Ganpatrao v. Union of India*, AIR 1993 SC 1267, 1292.

Introduction of section 10(18A) under 1961 Act.—*The Rulers of Indian States (Abolition of Privileges) Act, 1972*.—By the **Rulers of Indian States (Abolition of Privileges) Act, 1972 (54 of 1972)**, **section 10(18A)** was **inserted (w. e. f. 9-9-1972)**.

Exemption in respect of ex gratia payments made consequent to abolition of privy purse.—Amount received as privy purse under the then Article 291 of the Constitution of India was omitted as a consequence of omission of Article 291. Still, the Central Government was making other payments after the abolition of the privy purse to the Indian Rulers. Therefore, **section 10(18A)** of the 1961 Act was **inserted (w. e. f. 9-9-1972)** by the **Rulers of Indian States (Abolition of Privileges) Act, 1972 (54 of 1972)** which exempted any *ex gratia* payments made by the Central Government consequent on the abolition of privy purse.

Omission of section 10(18A) of 1961 Act.—*The Finance (No. 2) Act, 1998*.—By the **Finance (No. 2) Act, 1998 (21 of 1998)**, **section 10(18A)** was **omitted (w. e. f. 1-4-1999)**.

The scope and effect of the above omission had been elaborated in the following portion of the *Departmental Circular No. 772, dated 23-12-1998*:—

'6. Removal of certain exemptions.—* * *

6.3 The *ex gratia* payments made by the Central Government consequent upon the abolition of privy purses are exempt under clause (18A) of section 10. This clause was inserted in 1972. As this exemption has outlived its utility, the Act omits clause (18A) of section 10.

6.4 These amendments will take effect from 1st April, 1999, and will accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [Section 5]'

INCOME OF HOUSING BOARDS, DEVELOPMENT AUTHORITIES, ETC. [Omitted s. 10(20A)]

Introduction under 1961 Act.—*The Finance Act, 1970*.—By the **Finance Act, 1970 (19 of 1970)**, **section 10(20A)** has been **inserted (w. r. e. f. 1-4-1962)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 45, dated 2-9-1970*, as follows:—

'State housing boards, development boards, etc.—41. Several States have set up statutory Housing Boards for the framing and execution of housing and other development schemes. These Boards are autonomous organizations and they play an important role in implementing the housing programmes of the Government for the common good. As these Boards are serving an important public purpose and do not exist for private profit, the Finance Act, 1970, has made a specific provision, in a new clause (20A) of section 10 of the Income-tax Act exempting the income of such Boards from tax altogether. This provision exempts from tax any income of an authority constituted in India by or under any law enacted either for the purpose of dealing

with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both. This provision has been made effective from 1st April, 1962, that being the date of commencement of the Income-tax Act. [Section 10(20A) inserted by section 4(a) of the Finance Act, 1970]’.

Exemption in respect of income of Housing Boards, Development Authorities, etc.—This section 10(20A) of the 1961 Act, which had been inserted (w. r. e. f. 1-4-1962) by the Finance Act, 1970 (19 of 1970), exempted any income of an authority constituted in India by or under any law enacted either—

- (i) for the purpose of dealing with or satisfying the need for housing accommodation; or
- (ii) for the purpose of planning, development or improvement of cities, towns and villages; or
- (iii) for both (i) and (ii).

In section 10(20A) of the 1961 Act, area of activity is not limited to area but limited to activity itself and activity must be limited to either dealing with or satisfying need for housing accommodation or for purpose of planning, development or improvement of cities, towns and villages, or for both [*CIT v. Vidarbha Irrigation Development Corporation*, (2017) 399 ITR 131 (Bom)].

The word ‘development’ in section 10(20A) of the 1961 Act should be understood in its wide sense. There is no warrant to exclude all development programmes relating to any industry from the purview of the word ‘development’ in the said clause. There is no indication in the Act that the development envisaged therein should be confined to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area. The position is clear that authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income-tax. The Gujarat High Court in *Gujarat Industrial Development Corpn. v. CIT*, (1985) 151 ITR 255 (Guj) seems to have interpreted the exemption clause too rigidly and narrowly which resulted in the anomaly of bringing authorities like the appellant-corporation within the tentacles of income-tax liability while the authorities dealing with housing schemes which provide houses to private individuals would stand outside the taxing sphere [*Gujarat Industrial Development Corporation v. CIT*, (1997) 227 ITR 414, 419-20, 420 (SC)]. Also see, *Gujarat Municipal Finance Board v. Deputy CIT*, (1996) 221 ITR 317, 330, 333 (Guj); *CIT v. Rajasthan Land Development Corporation*, (2002) 255 ITR 199, 204-05 (Raj); *CIT v. Goa, Daman & Diu Industrial Development Corporation*, (1999) 151 CTR (Bom) 606, 607.

In *Sharda Sahayak Samadesh Kshettra Vikas Nigam Ltd. v. CIT*, (2000) 244 ITR 364, 365-66 (All), the assessee company was registered as a Government public company, as defined in section 617 of the Companies Act, 1956, for a large number of objects including the object of modernization and maintenance of irrigation system, etc. It has been held that it was not a ‘housing authority’ within the meaning of section 10(20A) of the 1961 Act and it was not entitled to exemption thereunder. Also see, *CIT v. State Industries Promotion Corporation of Tamil Nadu Ltd.*, (2009) 311 ITR 197 (Mad) [State Government undertaking]; *Karnataka State Small Industries Development Corporation Ltd. v. Asst. CIT*, (2013) 40 taxmann.com 212 (Karn).

In *Vidarbha Irrigation Development Corporation v. Addl. CIT*, (2005) 278 ITR 521 (Bom), the conclusion arrived at by the Tribunal was that the assessee was not a ‘development authority’ within the meaning of section 10(20A) of the 1961 Act. It was mainly on the basis of the purpose and object for which the assessee-corporation was constituted as mentioned in the preamble to the Vidarbha Irrigation Development Corporation Act, 1997, and without taking into consideration the scheme of the substantive provisions of the Vidarbha Irrigation Development Corporation Act, the Maharashtra Irrigation Act, 1976, and the Bombay Canal Rules, 1934. It has been further held that the conclusion needed to be reconsidered by the Tribunal. This judgment was affirmed in *Addl. CIT v. Vidarbha Irrigation Department Corporation*, (2017) 392 ITR 1, 4 (SC). However, in *CIT v. Vidarbha Irrigation Development Corporation*, (2017) 399 ITR 131 (Bom), it has been held that assessee was an authority under section 10(20A) of the 1961 Act and, hence, can claim exemption.

Reference may also be made to *Karnataka Industrial Areas Development Board v. CIT*, (1987) 168 ITR 96 (Karn); *Chandigarh Housing Board v. Union of India*, (2002) 253 ITR 714, 715, 717 (Punj), SLP notice issued: (2002) 255 ITR (St.) 98 (SC); *Chandigarh Housing Board v. Union of India*, SLP (C) No. 20288 of 2001: (2002) 255 ITR (St.) 97 (SC); *CIT v. Improvement Trust*, (2009) 308 ITR 361 (Punj).

Omission of section 10(20A) of 1961 Act.—*The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), section 10(20A) has been omitted (w. e. f. 1-4-2003).

The scope and effect of the above omission, as also amendment of section 80G, have been elaborated in the following portion of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*, as follows:—

‘13. *Income of certain Housing Boards, etc., to become taxable.*—13.1 Under the existing provisions contained in clause (20A) of section 10, income of the Housing Boards or other statutory authorities set-up for the purpose of dealing with or satisfying the need for housing accommodations or for the purpose of planning, development or improvement of cities, towns and villages is exempt from payment of income-tax.

13.2 Through the Finance Act, 2002 (20 of 2002), clause (20A) of section 10 has been deleted so as to withdraw exemption available to the above-mentioned bodies. The income of Housing Boards of the States and of Development Authorities would, therefore, also become taxable.

13.3 Under section 80G, donation made to housing authorities, etc., referred to in clause (20A) of section 10 is eligible for 50% deduction from total income in the hands of the donors. Since clause (20A) of section 10 has been deleted, donation to the housing authorities, etc., would not be eligible for deduction in the hands of the donors and this may result in drying up of donations. To continue the incentive to donation made to housing authorities, etc., section 80G has been amended so as to provide that 50% of the sum paid by an assessee to an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both, shall be deducted from the total income of such assessee.

13.4 These amendments will take effect from 1-4-2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent assessment years. [Sections 4(m) and 30].

INCOME OF NOTIFIED NEWS AGENCIES SET UP IN INDIA SOLELY FOR COLLECTION AND DISTRIBUTION OF NEWS [S. 10(22B)]

Introduction under 1961 Act.—*The Finance Act, 1994.*—By the Finance Act, 1994 (32 of 1994), section 10(22B) has been inserted (w. e. f. 1-4-1994).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 684, dated 10-6-1994, as follows:—

‘Provision for income-tax exemption on the income of specified news agencies.—**21.** The Finance Act, 1994 (32 of 1994), has inserted a new clause (22B) in section 10 of the Income-tax Act. This clause provides that any income of such news agency, set up in India solely for collection and distribution of news, as the Central Government may specify in this behalf by notification in the Official Gazette, will be exempt from income-tax. This will be subject to the condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and it does not distribute its income in any manner to its members. The notification granting exemption under this clause shall, at any one time, have effect for not more than three assessment years (including an assessment year or years commencing before the date of issue of such notification), as may be specified in the notification.

21.2 This amendment takes effect from 1-4-1994, and will, accordingly, apply in relation to assessment year 1994-95 and subsequent years. [Section 6].

Legislative amendments under 1961 Act.—**I.** *The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), 3rd proviso to section 10(22B) has been inserted (w. e. f. 1-4-2003).

For the scope and effect of the above insertion, reference may be made to paras. 14 to 14.2 of the Departmental Circular No. 8 of 2002, dated 27-8-2002.

II. *The Finance Act, 2023.*—By the Finance Act, 2023 (8 of 2023), 4th proviso to section 10(22B) has been inserted (w. e. f. 1-4-2024).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 1/2024, dated 23-1-2024, as follows:—

‘9. Removal of exemption of news agency under clause (22B) of section 10 of the Act.—**9.1.** Prior to the amendments made vide FA 2023, Clause (22B) of section 10 of the Act, *inter alia*, provided exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news. This was subject to the condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

9.2. In accordance with the stated policy of the Government of phasing out of exemptions and deductions under the Act, the exemption available to news agencies under clause (22B) of section 10 of the Act has been withdrawn from the assessment year 2024-25 vide FA 2023.

9.3. In view of above, FA 2023 has inserted fourth proviso to clause (22B) of section 10 of the Act so as to provide that nothing contained in clause (22B) of section 10 of the Act shall apply to any income of the news agency, of the previous year relevant to the assessment year beginning on or after the 1st day of April, 2024.

Applicability: This amendment is effective from 1st April, 2024 and accordingly applies to assessment year 2024-25 and subsequent assessment years.’

Exemption in respect of specified news agencies.—This section 10(22B) of the 1961 Act, as inserted (w. e. f. 1-4-1994) the Finance Act, 1994 (32 of 1994), exempts any income of such new agencies set up in India solely for collection and distribution of news as the Central Government has specified in this behalf subject to a

condition enumerated in **1st proviso** that such agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

News agencies which are specified for the above purposes are as follows:—

S. No.	Name of news agency	Assessment years	Notification No.
(1)	The Press Trust of India Limited, New Delhi	1994-95 to 1996-97	SO 1142, dated 10-11-1994: (1995) 214 ITR (St.) 194
(2)	The United News of India	1994-95 to 1996-97	SO 2524, dated 10-3-1995: (1996) 217 ITR (St.) 49
(3)	The Press Trust of India Limited, New Delhi	1997-98 to 1999-2000	SO 2332, dated 20-6-1996: (1996) 222 ITR (St.) 80
(4)	The United News of India	1997-98 to 1999-2000	SO 1873, dated 31-3-1997: (1997) 228 ITR (St.) 9
(5)	The Press Trust of India Limited, New Delhi	2000-01 to 2002-03	SO 603, dated 25-1-2000: (2000) 244 ITR (St.) 56
(6)	The United News of India	2000-01 to 2002-03	SO 1405, dated 3-4-2000: (2000) 245 ITR (St.) 77
(7)	The Press Trust of India Limited, New Delhi	2003-04 to 2005-06	SO 251, dated 7-1-2003: (2003) 261 ITR (St.) 30
(8)	The United News of India, New Delhi	2003-04 to 2005-06	256/2004, dated 12-10-2004
(9)	The United News of India, New Delhi	2006-07 to 2008-09	SO 2297, dated 5-6-2006: (2006) 284 ITR (St.) 39
(10)	The Press Trust of India Limited, New Delhi	2006-07 to 2008-09	SO 2298, dated 6-6-2006: (2006) 284 ITR (St.) 39
(11)	The Press Trust of India Limited, New Delhi	2009-10 to 2011-12	SO 618(E), dated 5-3-2009: (2009) 310 ITR (St.) 16
(12)	The United News of India	2009-10 to 2011-12	SO 1287(E), dated 20-5-2009
(13)	The Press Trust of India Limited, New Delhi	2012-13 to 2013-14	SO 1359(E), dated 15-6-2012: (2012) 345 ITR (St.) 155
(14)	The Press Trust of India Limited, New Delhi	2014-15 to 2015-16	SO 1257(E), dated 17-5-2013: (2013) 354 ITR (St.) 105
(15)	The Press Trust of India Limited, New Delhi	2016-17 to 2018-19	SO 2298(E), dated 24-8-2015: (2015) 378 ITR (St.) 13
(16)	The Press Trust of India Limited, New Delhi	2019-20 to 2021-22	SO 4211(E), dated 30-8-2018: (2018) 407 ITR (St.) 28
(17)	The Press Trust of India Limited, New Delhi	2022-23 & 2023-24	SO 1413(E), dated 15-3-2024

With regard to the notifications, it has been enumerated in **2nd proviso** that any notification issued by the Central Government shall, at any one time, have effect for such assessment year or years, not exceeding 3 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.

Return to be furnished under section 139(4C) of 1961 Act.—Every news agency referred to in section 10(22B) of the 1961 Act, with effect from 1-4-2003, shall, if the total income in respect of which such news agency is assessable, without giving effect to the provisions of section 10 of the 1961 Act, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and all the provisions of the 1961 Act shall apply as if it was a return required to be furnished under section 139(1) of the 1961 Act [s. 139(4C)(b) of the 1961 Act].

Special power conferred on the Central Government to rescind notification.—**3rd proviso to section 10(22B)** of the 1961 Act, inserted (w. e. f. 1-4-2003) by the Finance Act, 2002 (20 of 2002), specifically empowers the Central Government to rescind the specified news agency if the Government is satisfied that such

news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in 1st proviso to section 10(22B) of the 1961 Act.

Such rescinding of notification may be done at any time after giving a reasonable opportunity of showing cause. Further, a copy of such order rescinding the notification has to be forwarded to the concerned news agency and to the Assessing Officer.

Sunset clause for withdrawal of exemption under section 10(22B) of the 1961 Act.—As a result of amendment (w. e. f. 1-4-2024) in section 10(22B) by the Finance Act, 2023 (8 of 2023), a sunset clause has been enacted to the effect that exemption under section 10(22B) shall not be applied to any income of the news agency earned for and from assessment year 2024-25.

INCOME OF NOTIFIED GAMES OR SPORTS ASSOCIATIONS OR INSTITUTIONS ESTABLISHED IN INDIA [Omitted s. 10(23)]

Legislative amendments under 1961 Act.—**I. The Direct Tax Laws (Amendment) Act, 1989.**—By the Direct Tax Laws (Amendment) Act, 1989 (3 of 1989), section 10(23) was substituted (w. e. f. 1-4-1990).

The scope and effect of the above substitution have been elaborated in the following portion of the *Departmental Circular No. 551, dated 23-1-1990*:—

‘Provisions of the new clause (23) relating to exemption of income of a sports association or institution.—

3.36 The new clause (23) exempts the income of an association or institution established in India, which may be notified in the Official Gazette by the Central Government, having regard to the fact that the association or institution has as, its objects, the control, supervision, regulation or encouragement in India to the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf. However, the exemption is subject to the following conditions:—

- (i) The conditions regarding application of income, investment of funds in assets specified in section 11(5) and income from business are essentially the same as those in the case of clause (21) relating to scientific research associations, which have been enumerated at Sl. Nos. (i) to (iii) in the preceding para.

It is, however, provided in this clause that if any funds invested or deposited before 1-4-1989 in any form or mode other than that specified in section 11(5) are invested or deposited in the form or mode specified in section 11(5) by 30-3-1990, the exemption under this clause shall not be denied in respect of such funds.

- (ii) The association or institution should not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it. [This condition was also there in the old provisions of the clause].
- (iii) The association or institution should make an application in the prescribed form and manner to the prescribed authority for the purposes of grant of such exemption or continuance thereof.
- (iv) Before notifying the association or institution for the purposes of exemption under this clause, the Central Government may, for satisfying itself about the genuineness of the activities of the association or institution, call for such documents (including audited annual accounts) or information from the association or institution as it thinks necessary. The Government may also make such enquiries as it may deem necessary in this behalf.
- (v) The notification granting exemption under this clause shall, at any one time, have effect for not more than three assessment years (including an assessment year or years commencing before the date of issue of such notification), as may be specified in the notification.’

II. The Finance (No. 2) Act, 1991.—By the Finance (No. 2) Act, 1991 (49 of 1991), the following amendments (w. r. e. f. 1-4-1990) were made—

—4th proviso to section 10(23) was amended; and

—5th proviso to section 10(23) was inserted.

III. The Finance Act, 1992.—By the Finance Act, 1992 (18 of 1992), the following amendments were made—

—3rd proviso (b) to section 10(23) was substituted (w. r. e. f. 1-4-1990); and

—4th proviso to section 10(23) was amended (w. e. f. 1-4-1992).

For the scope and effect of the above amendments, reference may be made to paras. 23.3 to 23.8 of the *Departmental Circular No. 636, dated 31-8-1992*.

IV. The Finance Act, 2000.—By the Finance Act, 2000 (10 of 2000), item (d) to 3rd proviso to section 10(23) was inserted (w. e. f. 1-4-2001).

For the scope and effect of the above insertion, reference may be made to paras. 11 to 11.4 of the Departmental Circular No. 794, dated 9-8-2000.

Exemption in respect of income of certain approved association or institution established in India for specified objects in certain games or sports up to assessment year 1989-90.—This section 10(23) of the 1961 Act, as it stood between 1-4-1962 and 31-3-1990, exempted any income of an approved (by the Central Government⁸) association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the following games:—

- (1) Cricket;
- (2) Hockey;
- (3) Football;
- (4) Tennis;
- (5) Golf [*vide Notification No. SO 2688, dated 16-10-1961*⁹];
- (6) Rifle Shooting [*Notification NO. SO 1101, dated 1-3-1967*];
- (7) Table tennis [*vide Notification No. SO 1102, dated 8-3-1967*];
- (8) Polo [*Notification No. SO 1562, dated 22-4-1967*];
- (9) Badminton [*Notification No. SO 4091, dated 29-10-1968*];
- (10) Swimming; Athletics; Volleyball; Badminton; Wrestling; Basket-ball; Kabaddi; Weight-lifting; Gymnastics; Boxing; Squash; Chess; Bridge; Billiards; Cycling; Yachting; Flying; Judo; *Kho-Kho*; Horse-riding [*vide Notification No. GSR 206 dated 14-12-1972*];
- (11) Motor Racing including Motor Cycle Racing [*vide Notification No. 320, F. No. 197/ 4/73-IT(A1), dated 28-5-1974*];
- (12) Mountaineering [*vide Notification No. GSR 99, dated 30-9-1975*];
- (13) Body-building; Softball; Carrom [*Notification No. GSR 100, dated 4-10-1975*];
- (14) Rowing [*Notification No. SO 1241, dated 21-4-1995*];
- (15) Archery [*Notification No. SO 1720, dated 14-6-1995*].

The following were the approved associations or institutions for the above purpose: (1) Indian Hockey Federation; (2) All India Women's Hockey Association; (3) Board of Control for Cricket in India; (4) Swimming Federation of India; (5) Amateur Athletic Federation of India; (6) All India Football Federation; (7) Volleyball Federation of India; (8) Badminton Association of India; (9) Wrestling Federation of India; (10) All India Lawn Tennis Association; (11) Table Tennis Federation of India; (12) Basketball Federation of India; (13) Amateur *Kabaddi* Federation of India; (14) Indian Weightlifting Federation; (15) Gymnastic Federation of India; (16) Indian Polo Association; (17) Indian Golf Union; (18) Indian Amateur Boxing Federation; (19) Squash Rackets Association of India; (20) All India Chess Federation; (21) Ball Badminton Association of India; (22) All India Bridge Federation; (23) Indian Style Wrestling Association of India; (24) Billiards Association & Control Council of India; (25) Cycling Federation of India; (26) National Rifle Association of India; (27) Yachting Association of India; (28) Aero Club of India Ltd.; (29) Judo Federation of India; (30) *Kho-Kho* Federation of India; (31) Cycle Polo Federation of India; (32) Equestrian Federation of India [*vide Central Government's Order F. No. 197/7/70-IT(A1), dated 20-1-1973, as corrected by another Order of even No., dated 4-5-1973*]. Other approved sports institutions, etc., were: (33) All India Carrom Federation; (34) India Body Building Federation; (35) Softball Association of India [*Notification F. No. 197/19/75-IT (A1), dated 28-12-1975*]; (36) The Bombay Presidency Golf Club Ltd. [*Notification F. No. 197/21/75-IT(A1), dated 29-12-1975*]; (37) Aurangabad District Badminton Association [*Notification F. No. 197/4/75-IT (A1), dated 9-3-1976*]; (38) National Chess Trust of India [*Notification No. S.O. 958, dated 29-12-1975*]; (39) Amateur Riders Club [*Notification F. No. 197/21/73-IT (A1), dated 23-4-1976*]; (40) Madras Polo and Riders' Club (w. e. f. 1-4-1965)

8. The phraseology of section 10(23) of the 1961 Act clearly shows that it is the Central Government, and not the Central Board of Direct Taxes, which can exercise the power to specify the associations or institutions for the purpose of that section [*G. Kuppuswamy Naidu Memorial Sports Trust v. CIT*, (1975) 99 ITR 530, 531 (Mad)]. The CBDT is an authority quite different from the Central Government [*Carborundum Universal Ltd. v. Union of India*, (1966) 61 ITR 269 (Mad)].

The above power to specify under section 10(23) of the 1961 Act was one of discretion given to the Government. That did not mean that if such an association establishes that the games or sports under its control, supervision, etc., were of general public utility, it cannot, as of right, seek exemption under section 11(1)(a) of the 1961 Act. In this view of the matter, it may be concluded that the doctrine of mutuality is inapplicable [*CIT v. Andhra Pradesh Riding Club*, (1987) 168 ITR 393, 403 (AP)].

9. This notification was issued under section 4(3)(ii) of the 1922 Act and is deemed to have been issued under section 10(23) of the 1961 Act and is continuing in force accordingly [*vide* section 297(2)(k) of the 1961 Act].

[Notification F. No. 197/95/76-IT(A1), dated 26-8-1976]; (41) The Delhi Flying Club Ltd., New Delhi [Notification F. No. 197/161/76-IT (A1), dated 5-11-1976].

In *CIT v. Madras Polo and Riders Club*, (1989) 176 ITR 133 (Mad), the application for approval under section 10(23) of the 1961 Act was filed by the assessee on 14-6-1965, even before its return of income for the assessment year 1965-66 became due on 30-6-1965. Orders issued in the year 1976 granting approval with effect from 1-4-1965. It was held that the assessee was entitled to exemption for assessment years 1965-66 and 1966-67.

The exemption was available only if such association or institution applies its income, or accumulates it for application, solely to the objects for which it is established and no part of the income of the association or institution is distributed in any manner to its members except as grants to any association or institution affiliated to it. *Vide Circular No. 398, dated 17-10-1984*, it has been clarified that this requirement will have to be satisfied by filing copies of audited accounts before the ITO.

Exemption in respect of income of certain notified association or institution established in India for specified objects in certain games or sports.—This section 10(23) of the 1961 Act, as substituted (w. e. f. 1-4-1990) by the Direct Tax Laws (Amendment) Act, 1989 (3 of 1989), exempted any income of a notified (by the Central Government) association or institution established in India having regard to the fact that such association or institution has as its object the control, supervision, regulation or encouragement in India of the following games:—

- (1) Cricket;
- (2) Hockey;
- (3) Football;
- (4) Tennis;
- (5) Water sports [*vide Notification No. 3221(E), dated 17-9-2002: (2003) Tax LR (St.) 847*].

Procedure for grant of the exemption, etc.—Under the 1st proviso to section 10(23) of the 1961 Act, the association or institution is required to make an application in **Form No. 55** to the Director-General (Income-tax Exemptions) for the purpose of grant of the exemption, or continuance thereof, under section 10(23) of the 1961 Act.

The 2nd proviso to section 10(23) of the 1961 Act empowers the Central Government, before notifying the association or institution under section 10(23) of the 1961 Act,—

- to call for such documents (including audited annual accounts) or information from the association or institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the association or institution; and
- to make such inquiries as it may deem necessary in this behalf.

With regard to the notifications, it was enumerated in 7th proviso that any notification issued by the Central Government shall, at any one time, have effect for such assessment year or years, not exceeding 3 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.

Other conditions for availing the exemption.—This exemption under section 10(23) of the 1961 Act was available only if the following conditions are satisfied:—

- (a) Such association or institution applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established [3rd proviso (a)]. Moreover, the provisions of section 11(2) and 11(3) of the 1961 Act apply subject to the following modifications:—
 - (i) any reference to section 11 of the 1961 Act provisions shall be omitted;
 - (ii) the words “charitable or religious purposes” to be read as “for the purposes of games or sports”; and
 - (iii) the reference to “Assessing Officer” to be read as a reference to the “Director-General (Income-tax Exemptions)”.
- (b) Such association or institution invests or deposits its funds only in any of the following forms or modes for any period during the previous year otherwise than in any one or more of the forms or modes specified in section 11(5) of the 1961 Act [3rd proviso (b)]:—
 - (i) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the CBDT may, by notification in the Official Gazette, specify. In this regard, it was clarified *vide* 5th proviso for relevant assessment years that exemption shall not be denied in relation to voluntary contribution (other than voluntary contribution in cash or voluntary contribution in the form of jewellery, furniture or any other notified article by the

CBDT), subject to the condition that such voluntary contribution is not held by such association, otherwise than in any one or more of the forms or modes specified in section 11(5) of the 1961 Act, after the expiry of 1 year from the end of the previous year in which such asset is acquired *or* 31-3-1992, whichever is later;

- (ii) **(w. r. e. f. 1-4-1990)** any assets held by the scientific research association where such assets form part of the corpus of the fund of the association as on the 1-6-1973;
- (iii) **(w. r. e. f. 1-4-1990)** any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the scientific research association before the 1-3-1983;
- (iv) **(w. r. e. f. 1-4-1990)** any accretion to the shares, forming part of the corpus of the fund mentioned in sub-clause (ii), by way of bonus shares allotted to the scientific research association.

However, as per **4th proviso**, the exemption shall not be denied in relation to any funds invested or deposited before the 1-4-1989, otherwise than in any one or more of the forms or modes specified in section 11(5) of the 1961 Act if such funds do not continue to remain so invested or deposited after the 30-3-1993.

- (c) Such association or institution does not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it [**3rd proviso (c)**].
- (d) **(w. e. f. 1-4-2001)** Such association or institution applies the amount received by way of donations referred to in section 80G(2)(c) of the 1961 Act for purposes of development of infrastructure for games or sports in India or for sponsoring of games and sports in India [**3rd proviso (d)**].
- (e) If such association or institution has any income from profits and gains of business, then exemption shall be available only if the following twin conditions are fulfilled [**6th proviso**]:—
 - (i) the business is incidental to the attainment of its objectives; and
 - (ii) separate books of account are maintained by it in respect of such business.

Notified associations or institutions.—The following were the notified associations or institutions:—

S. No.	Name of association or institution	Assessment years	Notification No.
(1)	Aero Club of India, New Delhi	1990-91 to 1992-93	SO 1736, dated 27-5-1996: (1996) 222 ITR (St.) 96
		1993-94 to 1995-96	SO 784, dated 3-3-1998: (1999) 237 ITR (St.) 11-12
		1996-97 to 1998-99	SO 781, dated 11-3-1999: (1999) 237 ITR (St.) 46
		1999-2000 to 2001-02	SO 1404, dated 30-3-2000: (2000) Tax LR (St.) 899-900
		2002-03 to 2004-05	SO 1199, dated 30-1-2002: (2002) 256 ITR (St.) 55-56
(2)	All India Chess Federation, Calicut	1994-95 to 1996-97	SO 56, dated 20-8-2001: (2002) 255 ITR (St.) 1
		1997-98 to 1999-2000	223 of 2002, dated 20-8-2002: (2002) 176 CTR (St.) 45
(3)	All India Cricket Association for the Disabled, Mumbai	1999-2000 to 2001-02	SO 3217, dated 20-8-2002: (2003) 259 ITR (St.) 69-70
(4)	All India Football Federation, Cannanore	1990-91 to 1992-93	SO 919, dated 19-3-1996: (1996) 219 ITR (St.) 143
		1993-94 & 1994-95	SO 920, dated 19-3-1996: (1996) 219 ITR (St.) 144
(5)	All India Football Federation, Cannanore, Kochi	1995-96 to 1997-98	SO 2424, dated 10-8-2007: (2007) 295 ITR (St.) 12
(6)	All India Lawn Tennis Association, New Delhi	1990-91 to 1992-93	SO 1465, dated 15-4-1993: (1993) 204 ITR (St.) 61
(7)	All India Tennis	1993-94 to 1995-96	SO 2513, dated 5-9-1994: (1995) 211 ITR (St.) 46

S. No.	Name of association or institution	Assessment years	Notification No.
	Association, New Delhi	1996-97 to 1998-99	SO 3023, dated 4-10-1996: (1997) 223 ITR (St.) 108
		1999-2000 to 2001-02	SO 411, dated 13-1-1999: (1999) 237 ITR (St.) 11-12
		2002-03	48 of 2003, dated 5-3-2003: (2003) 180 CTR (St.) 234
(8)	Amateur Athletic Federation of India, New Delhi	1999-2000 to 2001-02	SO 1897, dated 29-7-2004: (2004) 270 ITR (St.) 8
(9)	Andhra Cricket Association, Guntur	1997-98 to 1999-2000	51 of 2003, dated 13-3-2003: (2003) 180 CTR (St.) 234-35
(10)	Archery Association of India, New Delhi	1990-91 & 1991-92	SO 1408, dated 7-4-2000: (2000) Tax LR (St.) 900
		1992-93 to 1994-95	SO 1412, dated 20-4-2000: (2000) Tax LR (St.) 900-01
		1995-96 to 1997-98	SO 1951, dated 7-6-1996: (1996) 222 ITR (St.) 96
		1998-99 to 2000-01	SO 2121, dated 24-9-1998: (1999) 236 ITR (St.) 194-95
		2001-02 to 2003-04	SO 588, dated 28-2-2001: (2001) 249 ITR (St.) 32
(11)	AITA Trust, New Delhi	2001-02 & 2002-03	SO 1867, dated 17-4-2003: (2003) Tax LR (St.) 956
(12)	Badminton Development Trust, Jamshedpur	1998-99 to 2000-01	SO 5, dated 21-12-2004: (2005) 273 ITR (St.) 6-7
(13)	Bengal Table Tennis Association, Calcutta	1990-91 to 1992-93	SO 704, dated 12-2-1992: (1992) 196 ITR (St.) 23
(14)	Billiards and Snooker Federation of India, Calcutta	1990-91 to 1992-93	SO 773, dated 1-3-1993: (1993) 203 ITR (St.) 8
		1993-94 to 1995-96	SO 1501, dated 1-5-1996: (1996) 222 ITR (St.) 95
		1996-97 to 1998-99	SO 416, dated 15-1-1999: (1999) 237 ITR (St.) 11-12
(15)	Billiards and Snooker Federation of India, Kolkata	1999-2000 to 2001-02	SO 2304, dated 25-8-2004: (2004) 271 ITR (St.) 48
(16)	Board of Control for Cricket in India, Bombay	1990-91 to 1992-93	SO 3005, dated 19-10-1995: (1996) 217 ITR (St.) 9
		1993-94 to 1995-96	SO 1497, dated 16-4-1996: (1996) 222 ITR (St.) 95
		1996-97 to 1998-99	SO 2211, dated 12-7-1996: (1996) 222 ITR (St.) 96
(17)	Bombay Cricket Association, Bombay	1990-91 to 1992-93	SO 1812, dated 3-6-1992: (1992) 198 ITR (St.) 59
(18)	Bombay Flying Club, Bombay	1993-94 to 1995-96	SO 1498, dated 23-4-1996: (1996) 222 ITR (St.) 95
		1996-97 to 1998-99	SO 109, dated 12-12-2001: (2002) 255 ITR (St.) 2
(19)	Bombay Hockey Association Ltd., Bombay	1989-90	SO 2436, dated 17-8-1992: (1993) 199 ITR (St.) 10
(20)	Bombay Hockey Association, Bombay	1991-92 & 1992-93	SO 1935, dated 22-3-1999: (1999) 239 ITR (St.) 37-38
(21)	Brihanmumbai Kreedha Ani Lalitkala Pratisthan, Mumbai	1998-99 to 2000-01	SO 1987, dated 25-6-1999: (1999) 239 ITR (St.) 40
		2001-02 & 2002-03	156 of 2004, dated 15-6-2004: (2004) 189 CTR (St.) 9

S. No.	Name of association or institution	Assessment years	Notification No.
(22)	Bulsar Cricket Association, Gujarat	1997-98 to 1999-2000	SO 2122, dated 9-10-1998: (1999) 236 ITR (St.) 195-96
(23)	Bulsar District Cricket Association, Bulsar	1991-92 to 1993-94	SO 2488, dated 3-9-1992: (1993) 199 ITR (St.) 12
(24)	Bulsar District Cricket Association, Gujarat	1990-91	SO 1467, dated 30-4-1993: (1993) 204 ITR (St.) 61
		1994-95 to 1996-97	SO 2511, dated 5-9-1994: (1995) 211 ITR (St.) 45
(25)	Bulsar District Cricket Association, Valsad	2000-01 to 2002-03	SO 997, dated 6-2-2001: (2001) 251 ITR (St.) 3-4
(26)	Chandigarh Lawn Tennis Association, Chandigarh	1990-91	SO 3501, dated 5-12-1996: (1997) 224 ITR (St.) 143
		1991-92 to 1993-94	SO 606, dated 4-2-2000: (2000) 243 ITR (St.) 122
		1994-95 to 1996-97	SO 1960, dated 31-7-2001: (2001) 252 ITR (St.) 5
(27)	Church of South India Trust Association, Chennai	1998-99 to 2000-01	SO 1988, dated 5-7-1999: (1999) 239 ITR (St.) 40-41
(28)	Coimbatore District Cricket Association, Coimbatore	1990-91 to 1992-93	SO 1298, dated 2-4-1991: (1991) 191 ITR (St.) 123
(29)	Cricket Association of Bengal	1990-91 to 1992-93	SO 413, dated 15-1-1999: (1999) 237 ITR (St.) 11-12
		1993-94 to 1995-96	SO 414, dated 15-1-1999: (1999) 237 ITR (St.) 11-12
		1996-97 & 1997-98	SO 415, dated 15-1-1999: (1999) 237 ITR (St.) 11-12
		1998-99 to 2000-01	SO 1421, dated 23-5-2000: (2000) Tax LR (St.) 901
		2001-02 & 2002-03	SO 1368, dated 10-4-2002: (2002) 257 ITR (St.) 16-17
(30)	Defence Accounts Sports Control Board, New Delhi	1997-98 to 1999-2000	SO 2565, dated 13-9-2001: (2002) 254 ITR (St.) 267
(31)	Delhi Golf Club Ltd., New Delhi	1991-92 to 1993-94	SO 1044, dated 6-5-1998: (1998) 233 ITR (St.) 126
(32)	Delhi Lawn Tennis Association, New Delhi	1990-91 to 1992-93	SO 991, dated 15-2-2007: (2007) 292 ITR (St.) 8
		1997-98 to 1999-2000	SO 990, dated 15-2-2007: (2007) 292 ITR (St.) 7
		2000-01 to 2002-03	SO 989, dated 15-2-2007: (2007) 291 ITR (St.) 100
(33)	Dolphin Club, Chennai	2000-01 to 2002-03	SO 3220, dated 27-8-2002: (2003) 259 ITR (St.) 69-70
(34)	Durand Football Tournament Society, New Delhi	1991-92 to 1993-94	SO 1372, dated 30-4-1993: (1993) 204 ITR (St.) 61
		1994-95 to 1996-97	SO 1937, dated 17-5-1999: (1999) 239 ITR (St.) 38-39
		1997-98 to 1999-2000	SO 3030, dated 30-10-2001: (2002) 254 ITR (St.) 281
		2000-01 to 2002-03	SO 1725, dated 15-6-2004: (2004) 270 ITR (St.) 8
(35)	Federation of Motor Sports Club of India, Chennai	1992-93 to 1994-95	SO 2487, dated 3-9-1992: (1993) 199 ITR (St.) 11
		1995-96 to 1997-98	SO 2741, dated 26-9-1995: (1996) 217 ITR (St.) 3
		1998-99 to 2000-01	SO 192, dated 17-9-1999: (2000) 242 ITR (St.) 189

S. No.	Name of association or institution	Assessment years	Notification No.
(36)	Gujarat Cricket Association, Ahmedabad	1990-91 to 1992-93	SO 3139, dated 25-11-1991: (1992) 194 ITR (St.) 266
		1993-94 to 1995-96	SO 772, dated 26-2-1993: (1993) 203 ITR (St.) 7
		1996-97 to 1998-99	SO 1509, dated 23-4-1996: (1996) 222 ITR (St.) 95
		1999-2000 to 2001-02	SO 1936, dated 30-3-1999: (1999) 239 ITR (St.) 38
(37)	Haryana Cricket Association, Bhiwani	1992-93 to 1994-95	SO 3140, dated 25-11-1991: (1992) 194 ITR (St.) 266
		1995-96 to 1997-98	SO 2471, dated 17-9-1997: (1998) 229 ITR (St.) 83
		1998-99 to 2000-01	10870, dated 12-4-1999: (1999) 153 CTR (St.) 17
(38)	Himalayan Rally Association, Bombay	1991-92 to 1993-94	SO 595, dated 26-12-1991: (1992) 195 ITR (St.) 51
(39)	India Polo Promotion Foundation, Mumbai	1998-99 to 2000-01	SO 1868, dated 27-5-2002: (2002) 257 ITR (St.) 23-24
		2001-02 & 2002-03	SO 4467, dated 14-11-2005: (2006) 280 ITR (St.) 47
(40)	Indian Golf Union, Calcutta	1991-92 to 1993-94	SO 866, dated 12-2-1992: (1992) 196 ITR (St.) 23
		1994-95 to 1996-97	SO 2067, dated 3-6-1996: (1996) 222 ITR (St.) 96
(41)	Indian Olympic Association, New Delhi	1992-93 to 1994-95	SO 1466, dated 30-4-1993: (1993) 204 ITR (St.) 61
		1995-96 to 1997-98	SO 2448, dated 5-8-1996: (1996) 222 ITR (St.) 96
		1998-99 to 2000-01	10878, dated 16-4-1999: (1999) 153 CTR (St.) 17-18
(42)	Jawaharlal Nehru Hockey Tournament Society, New Delhi	1992-93 to 1994-95	SO 8, dated 6-12-1993: (1994) 208 ITR (St.) 67
		1995-96 to 1997-98	SO 3101, dated 18-10-1994: (1995) 211 ITR (St.) 135
		1998-99 to 2000-01	SO 1986, dated 25-6-1999: (1999) 239 ITR (St.) 39-40
		2001-02 & 2002-03	SO 333, dated 16-1-2007: (2007) 290 ITR (St.) 56
(43)	Jorhant Tennis Club, Jorhat	1993-94 to 1995-96	SO 2016, dated 24-8-2000: (2001) 247 ITR (St.) 7-8
(44)	Judo Federation of India, New Delhi	1994-95 to 1996-97	SO 2962, dated 6-10-1994: (1995) 212 ITR (St.) 5
		1997-98 to 1999-2000	SO 190, dated 17-9-1999: (2000) 242 ITR (St.) 189
(45)	Karnataka Badminton Association, Bangalore	1994-95 to 1996-97	SO 2512, dated 5-9-1994: (1995) 211 ITR (St.) 46
(46)	Karnataka State Billiards Association, Bangalore	2000-01 & 2001-02	SO 1000, dated 19-3-2001: (2001) 251 ITR (St.) 5
		2002-03	SO 382, dated 14-1-2005: (2005) 274 ITR (St.) 9-10
(47)	Karnataka State Bridge Association, Bangalore	1997-98 to 1999-2000	SO 1908, dated 19-6-2007: (2007) 292 ITR (St.) 170
(48)	Kerala Football Association, Thiruvananthapuram	1999-2000	SO 1001, dated 11-4-2001: (2001) 251 ITR (St.) 5-6
(49)	Kodaikanal Boat Club, Kodaikanal	1990-91 & 1992-93	SO 1496, dated 25-3-1996: (1996) 222 ITR (St.) 95
		1993-94 & 1994-95	SO 1210, dated 6-2-2002: (2002) 256 ITR (St.) 55-56

S. No.	Name of association or institution	Assessment years	Notification No.
(50)	Kodaikanal Boat & Rowing Club, Kodaikanal	1995-96 to 1997-98	SO 1211, dated 6-2-2002: (2002) 256 ITR (St.) 55-56
		1998-99 to 2000-01	No. 276 of 2007, dated 26-11-2007
(51)	Madhya Pradesh Cricket Association, Indore	1996-97 to 1998-99	SO 2538, dated 23-7-2002: (2002) 258 ITR (St.) 82
		1999-2000 to 2001-02	142/2005, dated 17-5-2005: (2005) 195 CTR (St.) 161
(52)	Madhya Pradesh Flying Club Ltd., Indore	1990-91 to 1992-93	SO 774, dated 1-3-1993: (1993) 203 ITR (St.) 9
(53)	Maharashtra Cricket Association, Pune	1992-93 to 1994-95	SO 2242, dated 21-7-1992: (1992) 198 ITR (St.) 134
(54)	Maharashtra State Basketball Association, Mumbai	1999-2000	SO 2531, dated 20-3-2002: (2002) 258 ITR (St.) 81
		2000-2001 to 2002-03	SO 2305, dated 25-8-2004: (2004) 271 ITR (St.) 48-49
(55)	Mayor's Sports Benefit Fund, Kolkata	1997-98 to 1999-2000	SO 1909, dated 21-6-2007: (2007) 292 ITR (St.) 171
(56)	National Rifle Association of India, New Delhi	1990-91 to 1992-93	SO 381, dated 1-1-1997: (1997) 227 ITR (St.) 36
		1994-95 & 1996-97	SO 1232, dated 28-2-2002: (2002) 256 ITR (St.) 56
		2000-01 to 2002-03	SO 4, dated 21-12-2004: (2005) 273 ITR (St.) 6
(57)	Orissa Cricket Association, Cuttack	1991-92 to 1993-94	SO 3138, dated 25-11-1991: (1992) 194 ITR (St.) 265
(58)	Panjim Gymkhana, Panaji, Goa	1990-91 to 1992-93	SO 1297, dated 2-4-1991: (1991) 191 ITR (St.) 122
		1993-94 to 1995-96	SO 1371, dated 28-4-1993: (1993) 204 ITR (St.) 60
		1996-97 to 1998-99	SO 585, dated 30-11-2000: (2001) 249 ITR (St.) 32
		1999-2000 to 2001-02	SO 1872, dated 30-5-2003: (2003) Tax LR (St.) 958
(59)	Petroleum Sports Control Board, New Delhi	1990-91 to 1992-93	SO 1095, dated 12-4-1994: (1994) 210 ITR (St.) 16
		1993-94 to 1995-96	SO 1240, dated 10-4-1995: (1995) 215 ITR (St.) 45
		1996-97 to 1998-99	SO 1785, dated 3-9-1998: (1999) 235 ITR (St.) 21
		1999-2000 to 2001-02	SO 191, dated 17-9-1999: (2000) 242 ITR (St.) 189
		2002-03	SO 2039, dated 31-5-2002: (2002) 258 ITR (St.) 4
(60)	Poona District & Metropolitan Badminton Association, Pune	1990-91 to 1992-93	SO 1811, dated 3-6-1992: (1992) 198 ITR (St.) 58
		1993-94 to 1995-96	SO 3232, dated 30-9-2002: (2003) 259 ITR (St.) 69-70 and SO 2368, dated 13-9-2004: (2004) 271 ITR (St.) 49
(61)	Pune Tennis Mandal, Pune	1990-91 to 1992-93	SO 2486, dated 3-9-1992: (1993) 199 ITR (St.) 11
(62)	Railway Sports Promotion Board, New Delhi	1997-98 & 1998-99	SO 1215, dated 7-2-2002: (2002) 256 ITR (St.) 55-56
		1999-2000 to 2001-02	SO 4002, dated 19-12-2002: (2003) 260 ITR (St.) 318
(63)	Ratnagiri Zilla Bridge Association, Ratnagiri	1990-91 to 1992-93	SO 2023, dated 25-6-1991: (1991) 192 ITR (St.) 12
		1996-97 to 1998-99	SO 2068, dated 25-6-1996: (1996) 222 ITR (St.) 96
		1999-2000 to 2001-02	SO 193, dated 17-9-1999: (2000) 242 ITR (St.) 189
		2002-03	SO 3117, dated 30-11-2004: (2005) 273 ITR (St.) 5

S. No.	Name of association or institution	Assessment years	Notification No.
(64)	Sports Authority of Andhra Pradesh, Hyderabad	2000-01 to 2002-03	SO 3231, dated 27-9-2002: (2003) 259 ITR (St.) 69-70
(65)	Sports Authority of India, New Delhi	1990-91 to 1992-93	SO 1887, dated 6-8-1993: (1994) 205 ITR (St.) 85
		1993-94 & 1994-95	SO 1669, dated 8-7-2004: (2004) 270 ITR (St.) 8
(66)	Squash Rackets Association of Maharashtra, Bombay	1991-92 to 1993-94	SO 3045, dated 21-10-1991: (1992) 194 ITR (St.) 240
(67)	Surjit Singh Memorial Hockey Tournament Society, Jalandhar (Punjab)	1993-94 to 1995-96	SO 1468, dated 28-4-1993: (1993) 204 ITR (St.) 61
(68)	Tamil Nadu Cricket Association, Madras	1992-93 to 1994-95	SO 1810, dated 2-6-1992: (1992) 198 ITR (St.) 58
		1995-96 to 1997-98	SO 1499, dated 23-4-1996: (1996) 222 ITR (St.) 95
(69)	Tamil Nadu Cricket Association, Chennai	1998-99 to 2000-01	SO 998, dated 16-3-2001: (2001) 251 ITR (St.) 4
(70)	Tamil Nadu Tennis Association, Madras	1992-93 to 1994-95	SO 1813, dated 10-6-1992: (1992) 198 ITR (St.) 60
		1995-96 to 1997-98	SO 776, dated 27-2-1996: (1996) 219 ITR (St.) 21
		1998-99 to 2000-01	SO 782, dated 11-3-1999: (1999) 237 ITR (St.) 46-47
(71)	Tamil Nadu Tennis Association, Chennai	2001-02 & 2002-03	SO 1894, dated 19-7-2004: (2004) 270 ITR (St.) 8
(72)	Triangle Tennis Trust, Madras	1990-91	SO 248, dated 31-12-1993: (1994) 208 ITR (St.) 67
		1991-92 to 1993-94	SO 2963, dated 6-10-1994: (1995) 212 ITR (St.) 5
		1994-95 to 1996-97	SO 1735, dated 27-5-1996: (1996) 222 ITR (St.) 95
(73)	Triangle Tennis Trust, Chennai	1997-98 to 1999-2000	SO 2015, dated 24-8-2000: (2001) 247 ITR (St.) 7
		2000-01 to 2002-03	SO 456, dated 13-12-2006: (2007) 290 ITR (St.) 55
(74)	U.P. Cricket Association, Kanpur	1990-91 to 1992-93	SO 428, dated 19-2-1998: (1998) 232 ITR (St.) 18
		1993-94 to 1995-96	SO 1882, dated 15-9-1998: (1999) 235 ITR (St.) 21-22
		1996-97 to 1998-99	SO 2537, dated 23-7-2002: (2002) 258 ITR (St.) 81-82
		1999-2000 to 2001-02	SO 3212, dated 31-9-2002: (2003) 259 ITR (St.) 69-70
(75)	Wrestling Federation of India, New Delhi	1998-99 to 2000-01	SO 2566, dated 13-9-2001: (2002) 254 ITR (St.) 267-68
		2001-02 & 2002-03	SO 334, dated 16-1-2007: (2007) 290 ITR (St.) 57
(76)	Yachting Association of India, New Delhi	1991-92 to 1993-94	SO 2212, dated 12-7-1996: (1996) 222 ITR (St.) 96
		1999-2000 to 2001-02	SO 702, dated 21-2-2005: (2005) 275 ITR (St.) 166

Omission of section 10(23) of 1961 Act.—*The Finance Act, 2002.*—By the **Finance Act, 2002** (20 of 2002), section 10(23) was omitted (w. e. f. 1-4-2003).

For the scope and effect of the above omission, reference may be made to paras. 15 to 15.4 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002.*

In view of such omission, sports associations, etc., would not be eligible for exemption, for and from assessment year 2003-04, under section 10(23) of the 1961 Act. However, for and from assessment year 2003-04, amendments made in section 80G of the 1961 Act by the Finance Act, 2002 (20 of 2002), are apposite in this regard.

INCOME OF SECRETARIAT OF ASIAN ORGANISATION OF SUPREME AUDIT INSTITUTIONS (ASOSAI) [S. 10(23BBD)]

Introduction under 1961 Act.—*The Finance Act, 2001.*—By the Finance Act, 2001 (14 of 2001), section 10(23BBD) has been inserted (w. e. f. 1-4-2001).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 14 of 2001, dated 9-11-2001*, as follows:—

‘11. Exemption of the income of the Secretariat of Asian Organization of Supreme Audit Institutions.—

11.1 Through the Finance Act, 2001 (14 of 2001), a new clause (23BBD) has been introduced in section 10 of the Income-tax Act, 1961 (43 of 1961), so as to exempt the income of the Secretariat of the Asian Organization of the Supreme Audit Institutions which has been registered as ASOSAI-Secretariat under the Societies Registration Act, 1860 (21 of 1860), for a period of three previous years relevant to the assessment years beginning on the 1-4-2001.

11.2 This amendment takes effect retrospectively from 1-4-2001, and applies in relation to the assessment years 2001-2002, 2002-2003 and 2003-2004. [Section 5(d)]’.

Legislative amendments under 1961 Act.—I. The Finance Act, 2003.—By the Finance Act, 2003 (32 of 2003), section 10(23BBD) has been amended (w. e. f. 1-4-2004).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*, as follows:—

‘12. Tax exemption to Asian Organization of the Supreme Audit Institutions.—12.1 Under the existing provision contained in clause (23BBD) of section 10, any income of the Secretariat of the Asian Organization of the Supreme Audit Institutions registered as “ASOSAI-SECRETARIAT” under the Societies Registration Act, 1860 (21 of 1860), is not to be included in computing its total income, for three previous years relevant to the assessment years beginning on the 1-4-2001, and ending on the 31-3-2004.

12.2 The organization has decided to keep its Secretariat in India up to December, 2006. Clause (23BBD) of section 10 has been accordingly amended by the Finance Act, 2003 (32 of 2003), so as to extend the exemption for a further period of four assessment years beginning on the 1-4-2004, and ending on the 31-3-2008.

12.3 This amendment will take effect from 1-4-2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [Section 6(e)]’.

II. The Finance Act, 2007.—By the Finance Act, 2007 (22 of 2007), section 10(23BBD) has been amended (w. e. f. 1-4-2008).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 3/2008, dated 12-3-2008*, as follows:—

‘10. Exemption for income of ASOSAI-SECRETARIAT.—10.1 Under clause (23BBD) of section 10, any income of the Secretariat of the Asian Organization of the Supreme Audit Institutions registered as “ASOSAI-SECRETARIAT” under the Societies Registration Act, 1860 (21 of 1860), is exempt for seven previous years relevant to the assessment years beginning on the 1-4-2001, and ending on the 31-3-2008.

10.2 The term of India as the chair of this prestigious body has been extended by three years. In view of the same, the said clause has been amended so as to extend such exemption for a further period of three assessment years. Accordingly, such exemption will now be available for a period of ten previous years relevant to the assessment years beginning on the 1-4-2001, and ending on the 31-3-2011.

10.3 Applicability.—This amendment will take effect from the 1-4-2008, and will, accordingly, apply in relation to the assessment years 2008-09, 2009-10, 2010-11. [Section 6]’.

Exemption in respect of income of ASOSAI-Secretariat.—This section 10(23BBD) of the 1961 Act, which has been inserted (w. e. f. 1-4-2001) by the Finance Act, 2001 (14 of 2001) grants exemption in respect of any income of the ASOSAI-Secretariat, i.e., the Secretariat of the Asian Organization of the Supreme Audit Institution, registered under the Societies Registration Act, 1860 (21 of 1860) for assessment years 2001-02 to 2010-11.

Thus, exemption to ASOSAI-Secretariat is not available for and from assessment year 2011-12.

INCOME OF NORTH-EASTERN DEVELOPMENT FINANCE CORPORATION LIMITED [Omitted s. 10(23BBF)]

Introduction under 1961 Act.—*The Taxation Laws (Amendment) Act, 2006.*—By the Taxation Laws (Amendment) Act, 2006 (29 of 2006), section 10(23BBF) was inserted (w. e. f. 1-4-2006).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 1/2007, dated 27-4-2007*, as follows:—

‘4. Exemption of income of North-Eastern Development Finance Corporation Limited.—4.1 Section 86 of the Finance Act, 1996, granted exemption from income-tax for a period of ten years to the North-Eastern Development Finance Corporation Limited, set up in 1995. This exemption was thus available only up to assessment year 2005-06. The exemption has been extended for a further period of four years, during which it shall be gradually phased out. To this end, a new clause (23BBF) has been inserted in section 10 of the Act to provide for exemption from income-tax for any income of the North-Eastern Development Finance Corporation Limited being a company formed and registered under the Companies Act, 1956. The proviso to clause (23BBF) phases out the exemption of income beginning with inclusion of 20% of the total income for tax for the assessment year 2006-07, 40% for the assessment year 2007-08, 60% for the assessment year 2008-09, 80% for the assessment year 2009-10 and 100% for the assessment year 2010-11. The exemption under this clause shall be fully phased out in assessment year 2010-11 and no exemption will be available in this assessment year and subsequent assessment years.

4.2 Applicability.—Assessment year 2006-07 onwards. [Section 3].

Exemption in respect of income of the North-Eastern Development Finance Corporation Limited.—This section 10(23BBF) of the 1961 Act, which has been inserted (w. e. f. 1-4-2006) by the Taxation Laws (Amendment) Act, 2006 (29 of 2006) grants exemption in respect of any income of the North-Eastern Development Finance Corporation Limited, a company formed and registered under the Companies Act, 1956, in the following manner:—

S. No.	Assessment year(s)	Exempt income	Taxable income
(1)	2006-07	80% of total income	20% of total income
(2)	2007-08	60% of total income	40% of total income
(3)	2008-09	40% of total income	60% of total income
(4)	2009-10	20% of total income	80% of total income
(5)	2010-11 and onwards	Nil	100% of total income

Omission of section 10(23BBF) of 1961 Act.—The Finance Act, 2023.—By the Finance Act, 2023 (8 of 2023), section 10(23BBF) has been omitted (w. e. f. 1-4-2023).

The scope and effect of the above omission have been elaborated in the following portion of the Departmental Circular No. 1/2024, dated 23-1-2024, as follows:—

‘13. Omission of certain redundant provisions of section 10 of the Act.—13.1. Section 10 of the Act provides for incomes which are not included in total income. Clauses (23BBF), (23EB), (26A), (41) and (49) of this have already been sunset.

13.2. Hence, Finance Act 2023 has omitted clauses (23BBF), (23EB), (26A), (41) and (49) of section 10 of the Act.

Applicability: This amendment has taken effect from 1st April, 2023.’

INCOME OF NOTIFIED EXCHANGE RISK ADMINISTRATION FUND SET UP BY PUBLIC FINANCIAL INSTITUTIONS [Omitted s. 10(23E)]

Introduction under 1961 Act.—The Finance Act, 1989.—By the Finance Act, 1989 (13 of 1989), section 10(23E) was inserted (w. e. f. 1-4-1989).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 550, dated 1-1-1990, as follows:—

‘11. Incentives under the Exchange Risk Administration Scheme.—11.1 The Finance Minister, in his Budget Speech for 1988-89, had announced the framing of a scheme for exchange risk protection to borrowers of foreign currency from financial institutions. In accordance with the said announcement, a scheme known as the Exchange Risk Administration Scheme (ERAS) has been evolved.

11.2 Under the ERAS, a separate fund known as the “Exchange Risk Administration Fund” (ERAF) can be set up by the financial institutions which will make a suitable initial contribution to the corpus of the Fund.

11.3 The benefit of coverage of exchange risk under the Scheme is available only to foreign currency loans provided by institutions out of their external commercial borrowings. For the foreign currency loans covered under the ERAS, the principal repayment obligations of the borrowers will be “rupee-tied” at the rates of exchange prevailing on the date of disbursement to them. On such “rupee-tied” principal amounts, the borrowers will be required to pay a “composite cost” comprising—

- (a) interest which will be weighted average cost of the currency pool maintained by the concerned institution plus its usual spread, and
- (b) an Exchange Risk Premium (ERP).

11.4 With a view to help the growth of Exchange Risk Administration Fund in its initial stage, a number of tax concessions have been created.

11.5 A new clause (23E) has been inserted in section 10 of the Income-tax Act to exempt any income of such ERAF set up by a public financial institution as defined under section 4A of the Companies Act, whether jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf. The proviso to the new clause specifies a condition in relation to the proposed exemption to say that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared either wholly or partly with a public financial institution, the whole of the amount so shared shall be deemed to be income of the previous year in which such amount is so shared, and shall, accordingly, be chargeable to income-tax.

11.6 A new clause (14A) has been inserted in section 10 of the Income-tax Act to provide that the income in the nature of Exchange Risk Premium received by public financial institutions from the borrowers for being credited to the corpus of the Fund will be exempt in their hands.

11.7 A new clause (x) in sub-section (1) of section 36 of the Income-tax Act has been inserted to provide that any sum paid by public financial institutions by way of contribution to the Exchange Risk Administration Fund will be allowed as a deduction in computing their income under the head "Profits and gains from business or profession".

11.8 The above amendments will take effect from 1st April, 1989, and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent assessment years. [Sections 4 and 8 of the Finance Act, 1989].

Exemption in respect of income of notified Exchange Risk Administration Fund.—Section 10(23E) of the 1961 Act, which had been inserted (w. e. f. 1-4-1989) by the Finance Act, 1989 (13 of 1989), exempted any income of the following Exchange Risk Administration Fund set up by public financial institutions, either jointly or separately, and specified by the Central Government in this behalf:—

- (1) The Exchange Risk Administration Fund set up by the Industrial Development Bank of India, the Industrial Finance Corporation of India and the Industrial Credit and Investment Corporation of India Ltd. *vide Notification No. SO 872(E), dated 16-11-1990*. In this regard, reference may be made to *Press Release, dated 5-4-1989: (1989) 179 ITR (St.) 69-71*.
- (2) The Exchange Risk Administration Fund set up by the Power Finance Corporation Limited *vide Notification No. SO 1306, dated 11-5-1994*.
- (3) The Exchange Risk Administration Fund set up by Indian Renewable Energy Development Agency Limited *vide Notification No. SO 373, dated 28-1-2000*.

However, where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a public financial institution, then the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

Omission of section 10(23E) of 1961 Act.—The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), section 10(23E) of the 1961 Act was omitted (w. e. f. 1-4-2003).

The scope and effect of the above omission have been elaborated in the following portion of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*, as follows:—

‘11. Withdrawal of exemption on Exchange Risk Premium received by Public Financial Institutions.—11.1 Under clause (23E) of section 10, the income of a notified Exchange Risk Administration Fund (ERAF) set up by Public Financial Institutions is exempt from payment of income-tax. Under clause (14A) of section 10, any income received by a Public Financial Institution as Exchange Risk Premium from any person borrowing in foreign currency from such institutions is exempt, provided the premium is credited by the Institution to the ERAFs.

11.2 These exemptions were introduced in 1989 for providing exchange risk protection to borrowers of foreign currency loans from the financial institutions. The operations of these ERAFs are commercial in nature, wherein they collect an exchange have been in existence for a considerable period now and the tax exemptions have outlived their utility. However, any sum paid by a public financial institution by way of contribution to any such Exchange Risk Administration Fund shall continue to get deduction under section 36(1)(x).

11.3 In view of this, through the Finance Act, 2002, clauses (14A) and (23E) of section 10 have been deleted so as to withdraw exemption on income of Exchange Risk Administration Funds and also on income received as exchange risk premium by a public financial institution.

11.4 These amendments will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent assessment years. [Sections 4(j) and 4(u)]'.

INCOME OF CREDIT GUARANTEE FUND TRUST FOR SMALL INDUSTRIES FOR SPECIFIED PERIOD [Omitted s. 10(23EB)]

Introduction under 1961 Act.—*The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), section 10(23EB) was inserted (w. e. f. 1-4-2002).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*, as follows:—

‘17. Exemption of the income of the Credit Guarantee Fund Trust for Small Industries.—**17.1** Through the Finance Act, 2002, a new clause (23EB) has been introduced in section 10 of the Income-tax Act so as to exempt the income of the Credit Guarantee Fund Trust for Small Industries being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989, for a period of five previous years relevant to the assessment years beginning on 1st day of April, 2002, and ending on the 31st day of March, 2007.

17.2 This amendment takes effect retrospectively from 1st April, 2002, and applies in relation to the assessment years 2002-2003, 2003-2004, 2004-2005, 2005-2006 and 2006-2007. [Section 4(v)]'.

Legislative amendment under 1961 Act.—*I. The Finance Act, 2003.*—By the Finance Act, 2003 (32 of 2003), section 10(23EB) was amended (w. r. e. f. 1-4-2002).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*, as follows:—

‘13. Clarification regarding the Credit Guarantee Fund Trust for Small Industries.—**13.1** Under the existing provisions contained in clause (23EB) of section 10, the income of the Credit Guarantee Fund Trust for Small Scale Industries is exempt from tax for a period of five years relevant to the assessment years beginning on 1st April, 2002, and ending on 31st March, 2007.

13.2 The Finance Act, 2003, has amended the said clause so as to clarify the name of the trust as being the “Credit Guarantee Fund Trust for Small Industries”.

13.3 This amendment will take effect retrospectively from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-03 and four subsequent years. [Section 6(h)]'.

Exemption in respect of income of the Credit Guarantee Fund Trust for Small Industries.—Section 10(23EB) of the 1961 Act, which had been inserted (w. e. f. 1-4-2002) by the Finance Act, 2002 (20 of 2002), exempted, for assessment years 2002-03 to 2006-07, any income of the Credit Guarantee Fund Trust for Small Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under section 3(1) of the Small Industries Development Bank of India Act, 1989 (39 of 1989).

Omission of section 10(23EB) of 1961 Act.—*The Finance Act, 2023.*—By the Finance Act, 2023 (8 of 2023), section 10(23EB) has been omitted (w. e. f. 1-4-2023).

‘13. Omission of certain redundant provisions of section 10 of the Act.—**13.1.** Section 10 of the Act provides for incomes which are not included in total income. Clauses (23BBF), (23EB), (26A), (41) and (49) of this have already been sunset.

13.2. Hence, Finance Act 2023 has omitted clauses (23BBF), (23EB), (26A), (41) and (49) of section 10 of the Act.

Applicability: This amendment has taken effect from 1st April, 2023.'

CERTAIN INCOMES OF AN INFRASTRUCTURE CAPITAL FUND OR AN INFRASTRUCTURE COMPANY OR A CO-OPERATIVE BANK FROM SPECIFIED INVESTMENTS [Omitted s. 10(23G)]

Introduction under 1961 Act.—*The Finance (No. 2) Act, 1996.*—By the Finance (No. 2) Act, 1996 (33 of 1996), section 10(23G) was inserted (w. e. f. 1-4-1997).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 762, dated 18-2-1998*, as follows:—

‘17. Income-tax exemption to infrastructure development funds and companies.—**17.1** In recognition of the need for adequate infrastructure facility which is vital for accelerating the economic development of the

country, the existing provisions of the Income-tax Act provide a five-year tax holiday to an enterprise carrying on the business of developing, maintaining and operating any infrastructure facility. However, in order to attract further investment to this sector, an urgent need has been felt for providing more tax incentives to investors.

17.2 The Finance (No. 2) Act, 1996, therefore, provides tax exemption to such infrastructure capital funds and companies which are established for the purposes of mobilizing resources for financing infrastructure facilities.

17.3 Accordingly, any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company from investment made by way of shares or long-term finance in any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfils the conditions specified in sub-section (4A) of section 80-IA has been exempted from income-tax.

17.4 The expression “infrastructure capital fund” shall mean a fund operating under a trust deed registered under the provisions of the Registration Act, 1908, established to raise moneys for investments by way of acquiring shares or providing long-term finance to an enterprise engaged in providing infrastructure facility. The expression “infrastructure capital company” shall mean a company which has made investment by way of acquiring shares or providing long-term finance to an enterprise engaged in the business of providing infrastructure facility. The expression “infrastructure facility” shall mean a road, highway, bridge, airport, port, a rail system, or any other public facility of a similar nature as may be notified by the Central Board of Direct Taxes in this behalf in the Official Gazette. It will also include water supply projects, sewerage, sanitation or irrigation systems. The expression “long-term finance” shall mean any loan or advance which is repayable along with the interest during a period of not less than five years.

17.5 The amendment will take effect from 1st April, 1997, and will, accordingly, apply in relation to the assessment year 1997-98 and subsequent years. [Section 4]’.

Legislative amendments under 1961 Act.—I. The Finance Act, 1997.—By the Finance Act, 1997 (26 of 1997), section 10(23G) was amended (w. e. f. 1-4-1998).

For the scope and effect of the above amendment, reference may be made to paras. 13 to 13.7 of the Departmental Circular No. 763, dated 18-2-1998.

II. The Finance (No. 2) Act, 1998.—By the Finance (No. 2) Act, 1998 (21 of 1998), section 10(23G) was substituted (w. e. f. 1-4-1999).

The scope and effect of the above substitution have been elaborated in the following portion of the Departmental Circular No. 772, dated 23-12-1998, as follows:—

‘10. Rationalization of clause (23G) of section 10.—10.1 In recognition of the vital role played by the infrastructure in the development of economy, the Finance (No. 2) Act, 1996, with effect from 1st April, 1997, inserted section 10(23G) of the Income-tax Act, 1961, to provide tax exemption to any “infrastructure capital fund” or “infrastructure capital company” in respect of income by way of dividends, interest and long-term capital gains derived from investments in the form of shares or long-term finance in an enterprise carrying on the business of developing, maintaining and operating an infrastructure facility. This provision came into effect from the assessment year 1997-98.

10.2 Since no safeguards had been provided to ensure that the tax-free funds raised by companies were invested in infrastructure development, it was not possible to ascertain, whether the purpose for which the section was introduced, viz., the development of infrastructure facility, was being achieved or not. To serve this purpose, the provisions of section 10(23G) have been amended by the Finance (No. 2) Act, 1998, to provide, *inter alia*, that the exemption under this clause shall be available only in respect of the investments in an enterprise,—

- (i) which is *wholly* engaged in the business of developing, maintaining and operating an infrastructure facility; and
- (ii) which has been approved by the Central Government on an application made by it in accordance with the rules made in this behalf and which satisfies the specific conditions.

10.3 The amended provisions would apply only in respect of investments made on or after 1st June, 1998. Doubts had been expressed in different quarters about the continuance of exemption available under section 10(23G) in respect of investments made prior to 1st June, 1998, for the assessment year 1999-2000 and onwards. The Central Board of Direct Taxes have clarified by way of a press release that the exemption available under the provisions of section 10(23G), prior to its amendment by the Finance (No. 2) Act, 1998, will continue to govern the investments made prior to 1st June 1998. The rules and forms in this regard have since been notified, vide Notification No. SO 897(E), dated 12th October, 1998.

10.4 The definition of “infrastructure facility” in this clause has also been amended so as to include a project for housing which fulfils the conditions specified in sub-section (4F) of section 80-IA.

10.5 The amendment will take effect from 1st April, 1999, and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [Section 5]’.

III. The Income-tax (Second Amendment) Act, 1998.—By the **Income-tax (Second Amendment) Act, 1998** (11 of 1999), the following **amendments (w. e. f. 1-4-1999)** were made—

—**Explanation to section 10(23G)** was **numbered as Explanation 1** thereof; and

—**Explanation 2 to section 10(23G)** was **inserted**.

IV. The Finance Act, 1999.—By the **Finance Act, 1999** (27 of 1999), the following **amendments (w. e. f. 1-4-2000)** were made—

—**section 10(23G) (opening portion)** was **amended**;

—**Explanation 1(c)(i) & (ii) of section 10(23G)** were **substituted**; and

—**Explanation 1(c)(iv) & (v) of section 10(23G)** were **substituted** for the then existing sub-clause (iv).

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 779, dated 14-9-1999*, as follows:—

‘**11. Exemption of the scope of eligible infrastructure facilities for the purpose of exemption under section 10(23G).**—**11.1** The existing clause (23G) of section 10 of the Income-tax Act exempts any income of an infrastructure capital fund or an infrastructure capital company earned by way of interest, dividends (other than dividends referred to in section 115-O) and long-term capital gains from investments made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of developing, maintaining and operating an infrastructure facility.

11.2 The Finance Act, 1999 (27 of 1999), amends this clause to enhance the scope of the nature of infrastructure activities eligible for exemption under this clause. It provides that enterprises wholly engaged in either (i) developing, maintaining and operating, or (ii) developing, or (iii) maintaining and operating an infrastructure facility would now be eligible for the exemption. With this amendment, it is made clear that any enterprise engaged in developing, maintaining and operating the infrastructure facility or maintaining and operating the infrastructure facility or only developing the infrastructure facility would also be eligible for exemption under this clause.

11.3 The Finance Act, 1999 (27 of 1999), has also expanded the scope for infrastructure facility defined for the purpose of this clause in *Explanation 1*, by including within its ambit the undertaking which starts transmission or distribution of power by laying a network of new transmission or distribution lines at any time between 1-4-1999, and 31-3-2003.

11.4 An undertaking or a project for (i) developing, (ii) developing and operating, or (iii) maintaining and operating an industrial park which has been notified by the Central Government under clause (iii) of sub-section (4) of section 80-IA is also included in the definition of infrastructure facility and is, thus, within the scope of exemption under this clause.

11.5 This amendment will take effect from 1-4-2000, and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent years. [Section 6]’.

V. The Finance Act, 2000.—By the **Finance Act, 2000** (10 of 2000), the following **amendments** were made—

—**Explanation 1(a) to section 10(23G)** was **amended (w. r. e. f. 1-4-2000)**;

—**Explanation 1(b) to section 10(23G)** was **amended (w. r. e. f. 1-4-2000)**; and

—**Explanation 1(c)(i) to section 10(23G)** was **amended (w. e. f. 1-4-2001)**.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 794, dated 9-8-2000*, as follows:—

‘**14. Infrastructure capital funds.**—**14.1** Clause (23G) of section 10 provides that any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividends (other than dividends referred to in section 115-O) and long-term capital gains from investments made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.

14.2 To provide impetus for infrastructure development, the scope of the term “infrastructure facility” as defined in sub-section (4) of section 80-IA has been enlarged so as to include “solid waste management” and “water treatment” within its scope. As a consequence of this, the definition of “infrastructure facility” as

given in clause (c) of *Explanation 1* of section 10(23G) has also been extended to include “solid waste management and water treatment” within its ambit.

14.3 This amendment will take effect from 1-4-2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

14.4 Clauses (a) and (b) of *Explanation 1* to the section 10(23G) have also been amended so as to bring the definition of infrastructure capital company and infrastructure capital fund in conformity with the said clause. These amendments are consequential to the amendment of section 10(23G) by the Finance Act, 1999 (27 of 1999).

14.5 These amendments will take effect retrospectively from 1-4-2000, and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent years. [Section 5(g)]’.

VI. The Finance Act, 2001.—By the Finance Act, 2001 (14 of 2001), the following amendments (w. e. f. 1-4-2002) were made—

- section 10(23G) was amended at two places;
- Explanation 1(c)* to section 10(23G) was omitted; and
- Explanation 1(e) & (f)* to section 10(23G) were inserted.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 14 of 2001, dated 9-11-2001*, as follows:—

‘17. Definition of ‘Infrastructure facility’ in section 10(23G) to be same as that in section 80-IA(4).—17.1 Under the existing provisions contained in clause (23G) of section 10, any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividend (other than dividends referred to in section 115-O) and long-term capital gains from investment made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.

17.2 Fiscal incentives for development of infrastructure have been provided in the Income-tax Act as a package, so that tax holiday is allowed under section 80-IA to the infrastructure enterprise and income from long-term investment made by the Infrastructure Capital Company or Infrastructure Capital Fund in the approved enterprise is exempt under section 10(23G). Thus, whenever a decision is taken to revise the scope of fiscal incentives to infrastructure by amending section 80-IA, necessary amendments are required to be made in sections 10(23G) as well.

17.3 Thus, as a measure of rationalization, the Finance Act, 2001 (14 of 2001), has amended section 10(23G) so as to provide that income by way of interest, dividend or long-term capital gains of an infrastructure capital fund or an infrastructure capital company, from investments in any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or in a housing project referred to in sub-section (10) of section 80-IB will not be included in computing the total income. This will remove the requirement of consequential amendment in section 10(23G) as a result of any future change in section 80-IA regarding infrastructure.

17.4 This amendment will take effect from 1-4-2002, and will, accordingly, apply in relation to assessment year 2002-03 and subsequent assessment years. [Section 5(g)]

18. Co-operative Banks to be eligible investors.—18.1 The expressions “infrastructure capital company” and “infrastructure capital fund” have been defined in section 10(23G). At present, Co-operative Banks being neither a company nor a fund operating under the provisions of the Registration Act are not covered by these definitions.

18.2 Clause (23G) of section 10 has therefore been amended through the Finance Act, 2001 (14 of 2001), so as to provide that income of a Co-operative Bank by way of interest, dividends (other than dividends referred to in section 115-O) and long-term capital gains from investments made by way of equity or long-term finance in an approved enterprise will also be exempt from payment of income-tax.

18.3 This amendment will take effect from 1-4-2002, and will, accordingly, apply in relation to assessment year 2002-03 and subsequent assessment years. [Section 5(g)]

19. Income by way of fee or guarantee commission received by financial institutions for providing financial guarantee to be exempt.—19.1 Under the existing provisions contained in clause (23G) of section 10, any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividends (other than dividends referred to in section 115-O) and long-term capital gains from investment made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.

19.3 The Finance Act, 2001 (14 of 2001), has amended clause (23G) of section 10 so as to extend the exemption under this clause to income received by way of credit enhancement fees or guarantee commission by a financial institution from an approved enterprise.

19.4 This amendment will take effect from 1-4-2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. [Section 5(g)].

VII. The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), section 10(23G) was amended (w. e. f. 1-4-2003).

For the scope and effect of the above amendment, reference may be made to paras. 52.6 to 52.7 of the Departmental Circular No. 8 of 2002, dated 27-8-2002.

VIII. The Finance Act, 2003.—By the Finance Act, 2003 (32 of 2003), the following amendments were made—

- section 10(23G) was amended (w. e. f. 1-4-2004);
- Explanation 1(a) to section 10(23G) was amended (w. r. e. f. 1-4-2002);
- Explanation 1(b) to section 10(23G) was amended (w. r. e. f. 1-4-2002); and
- Explanation 1(g) & (h) to section 10(23G) were inserted (w. e. f. 1-4-2004).

The scope and effect of the above amendments have been elaborated in the following portion of the Departmental Circular No. 7 of 2003, dated 5-9-2003, as follows:—

‘14. Incentive for construction of hotels and hospitals.—**14.1** Under the existing provisions contained in clause (23G) of section 10, any income by way of dividend, interest or long-term capital gains of an infrastructure capital fund or infrastructure capital company or a co-operative bank from investments made by way of shares or long-term finance in any infrastructure undertaking, power generation project, telecom services, housing project, etc., is not included in computing its total income.

14.2 With a view to encourage investment in the hospitality and health sector, projects for construction of hotels and hospitals have also been included in the list of eligible business under this clause. To be eligible for this purpose, a hotel project should be for constructing a hotel of not less than three-star category and a hospital project should be for constructing a hospital with at least one hundred beds for patients.

14.3 Definitions of an infrastructure capital company or an infrastructure capital fund as provided in clauses (a) & (b) of Explanation 1 have also been amended so as to align them with the provisions of the main clause. Infrastructure capital company or an infrastructure capital fund has been defined as such company or fund as has made investments by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business referred to in this clause, i.e., business referred to in sub-section (4) of section 80-IA, a housing project, etc.

14.4 This amendment will take effect from 1-4-2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [Section 6(j)(ii) & (iii)].

IX. The Finance (No. 2) Act, 2004.—By the Finance (No. 2) Act, 2004 (23 of 2004), proviso to section 10(23G) was inserted (w. e. f. 1-4-2005).

The scope and effect of the above insertion, as also amendments made in section 115JB, have been elaborated in the following portion of the Departmental Circular No. 5 of 2005, dated 15-7-2005, as follows:—

‘Income of infrastructure capital company liable to tax under section 115JB.—**[12.]** Under the existing provisions contained in clause (23G) of section 10, any income by way of dividends, other than dividends referred to in section 115-O, interest, or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a co-operative bank from investments made in any undertaking engaged in an infrastructure project or a housing project or a hotel or hospital project is excluded from the total income.

[12.1] With a view to rationalize the provision, a proviso has been inserted in the said clause so as to provide that in the case of an infrastructure capital company the above-mentioned incomes shall be taken into account in computing the book profit for the purpose of section 115JB and for payment of tax under that section. Consequential amendments have been made in section 115JB.

[12.2] These amendments take effect from 1-4-2005, and apply in relation to the assessment year 2005-2006 and subsequent years. [Sections 5(g), 28].

X. The Special Economic Zones Act, 2005.—By the Special Economic Zones Act, 2005 (28 of 2005), section 10(23G) was amended (w. e. f. 10-2-2006).

Exemption in respect of certain incomes of an infrastructure capital fund or an infrastructure capital company.—*Law up to assessment year 1998-99.*—This section exempted any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund [as defined] or an infrastructure capital company [as defined] from investments made by way of shares or long-term finance [as defined in section

36(1)(viii) of the 1961 Act] in any enterprise carrying on the business of developing, maintaining and operating any *infrastructure facility* [as defined]. For assessment year 1997-98, such infrastructure facility had to fulfil the conditions specified in section 80-IA(4A) of the 1961 Act.

The following *Circular No. 780, dated 4-10-1999* clarified certain aspects pertaining to section 10(23G) of the 1961 Act:—

“*Computation of income falling under clause (23G) of section 10 of the Income-tax Act, 1961—Regarding.*—Section 10(23G) of the Income-tax Act, 1961, was inserted by the Finance (No. 2) Act, 1996, with effect from 1-4-1997. This clause exempts income by way of dividend, interest and long-term capital gains arising out of investments made in an enterprise engaged in the business of developing, maintaining and operating an infrastructure facility. The exemption is available subject to fulfilment of various conditions as contained in the section read with rule 2E of the Income-tax Rules, 1962.

2. The Board has received a number of references seeking to know whether it is the gross income that is exempt or it is the net income after taking into account all expenses incurred to earn the receipt, that is, exempt from tax.

3. The Board has considered the issue and it is clarified that it is the net income after taking into account all expenses incurred to earn the same, that is, exempt under section 10(23G) of the Act. The term “income” as used in the opening words of section 10 and in clause (23G) of the said section refers to income as computed under the provisions of the Income-tax Act. The terms “income” and “gross receipts” have distinct and separate meanings and have been used, accordingly under the Act. Thus, what would be exempt under clause (23G) of section 10 is the income by way of dividend, interest or long-term capital gains and not the gross receipt.

4. Secondly, another issue on which clarification has been sought is whether, in order to avail of exemption of interest on long-term finance, by infrastructure capital company/fund, the enterprise engaged in business of development, maintaining and operating an infrastructure facility should have been approved for that particular assessment year in respect of which exemption is claimed. In this connection, it is clarified that an enterprise is required to take approval under section 10(23G) of the Act for all the assessment years during which the long-term finance is repaid and interest on long-term finance shall be exempt in the hands of infrastructure capital company/fund for only those assessment years in which the enterprise is approved under section 10(23G).

5. Next issue on which clarification has also been sought is whether tax is required to be deducted at the time of payment of the interest income to an infrastructure capital company or fund by an approved ‘infrastructure enterprise’. It is clarified that according to the existing provision of the Act, tax is required to be deducted at source in all such cases. However, such infrastructure capital company or fund may apply to their Assessing Officers for certificate of deduction at lower rate or for certificate of non-deduction of TDS under section 197 of the Income-tax Act, 1961, and on receipt of such applications, the Assessing Officer shall issue the requisite certificate expeditiously.

6. This may be brought to the notice of all the Assessing Officers in your region.”

Law between assessment years 1999-2000 and 2006-07.—This section exempted any income by way of dividends [other than dividends referred to in section 115-O of the 1961 Act (except for assessment year 2003-04)], interest [includes any fee or commission received by a financial institution for giving any guarantee to, or enhancing credit in respect of, an enterprise which has been approved by the Central Government] or long-term capital gains of an *infrastructure capital fund* [as defined] or an *infrastructure capital company* [as defined] [(w. e. f. 1-4-2002) or a co-operative bank] from investments made on or after 1-6-1998 by way of shares or *long-term finance* [as defined in section 36(1)(viii) of the 1961 Act] in—

- (between 1-4-1999 and 31-3-2000) any enterprise wholly engaged in the business of developing, maintaining and operating any infrastructure facility [as then defined];
- (between 1-4-2000 and 31-3-2002) any enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating, or (iii) developing, maintaining and operating any infrastructure facility [as then defined]
- (w. e. f. 1-4-2002) any enterprise or undertaking wholly engaged in the business referred to in section 80-IA(4) of the 1961 Act [(w. e. f. 10-2-2006) or section 80-IAB(3) of the 1961 Act]; or
- (w. e. f. 1-4-2002) a housing project referred to in section 80-IB(10) of the 1961 Act; or
- (w. e. f. 1-4-2004) a *hotel project* [i.e., a project for constructing a hotel for not less than 3-star category as classified by the Central Government]; or
- (w. e. f. 1-4-2004) a *hospital project* [i.e., a project for constructing a hospital with at least one hundred beds for patients]

and which has been approved by the Central Government on an application [to be made on or after 1-6-1998 in **Form No. 56E of the 1962 Rules** as prescribed in rule 2E(1) of the 1962 Rules] made by it in accordance with Rule 2E of the 1962 Rules.

It may be seen that the above **section 10(23G)** of the 1961 Act provides, *inter alia*, that the exemption shall be available in respect of the investments made on or after 1-6-1998 only in an enterprise which is wholly engaged in the business of developing, maintaining and operating an infrastructure facility and which has been approved by the Central Government. However, there was no provision whereunder an assessee can avail the benefit of exemption under section 10(23G) of the 1961 Act in respect of investments made between 1-4-1998 and 31-5-1998. Therefore, *Explanation 2* to section 10(23G) of the 1961 Act had been inserted (**w. e. f. 1-4-1999**) by the **Income-tax (Second Amendment) Act, 1998** (11 of 1999), in order to remove such lacuna, clarifying that the exemption available under section 10(23G) of the 1961 Act in respect of investments made between 1-4-1998 and 31-5-1998 should continue to be governed by the provisions of section 10(23G) of the 1961 Act, as it stood between 1-4-1998 and 31-3-1999.

The bonds which had been issued, in respect of which exemption is claimed by the assessee, were so issued on 18-2-1998, then the requirement of a notification in the Official Gazette as a condition precedent for exemption under section 10(23G) of the 1961 Act was inapplicable [*CIT v. Lord Krishna Bank Ltd.*, (2014) 366 ITR 416, 417 (Bom)].

It was also pertinent to note that as per **proviso to section 10(23G)** of the 1961 Act, which had been inserted (**w. e. f. 1-4-2005**) by the **Finance (No. 2) Act, 2004** (23 of 2004), the exempt income was to be taken into account in computing the book profit and income-tax payable under section 115JB of the 1961 Act.

“Infrastructure capital company”, defined.—*Law up to assessment year 1998-99.*—It meant such company as has made investments by way of acquiring shares or providing long-term finance to an enterprise carrying on the business of developing, maintaining and operating infrastructure facility.

Law between assessment years 1999-2000 to 2006-07.—It meant such company as has made investments by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business—

- (between 1-4-1999 and 31-3-2000) of developing, maintaining and operating infrastructure facility [as then defined]
- (between 1-4-2000 and 31-3-2002) of (i) developing; or (ii) maintaining and operating; or (iii) developing, maintaining and operating, any infrastructure facility [as then defined]
- (w. e. f. 1-4-2002) referred to in section 10(23G) of the 1961 Act.

“Infrastructure capital fund”, defined.—*Law up to assessment year 1998-99.*—It meant such fund operating under a trust deed, registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to an enterprise carrying on the business of developing, maintaining and operating infrastructure facility.

Law between assessment years 1999-2000 and 2006-07.—It meant such fund operating under a trust deed, registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business—

- (between 1-4-1999 and 31-3-2000) of developing, maintaining and operating infrastructure facility [as then defined]
- (between 1-4-2000 and 31-3-2002) of (i) developing; or (ii) maintaining and operating; or (iii) developing, maintaining and operating, any infrastructure facility [as then defined]
- (w. e. f. 1-4-2002) referred to in section 10(23G) of the 1961 Act.

“Infrastructure facility”, defined.—*Law for assessment year 1997-98.*—The expression had the same meaning as had been assigned in section 80-IA(12)(ca) of the 1961 Act.

Law for assessment year 1998-99.—It meant:—

- (i) a road, highway, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette which fulfils the conditions specified in section 80-IA(4A) of the 1961 Act;
- (ii) a water supply project, irrigation project, sanitation and sewerage system which fulfils the conditions specified in section 80-IA(4A) of the 1961 Act;
- (iii) a project for generation or generation and distribution of electricity or any other form of power where such project starts generating power on or after 1-4-1993;
- (iv) a project for providing telecommunication services on or after 1-4-1995.

Law between assessment years 1999-2000 and 2001-02.—It meant:—

- (i) a road, highway, bridge, airport, port, rail system, a water supply project, irrigation project, [(w. e. f. 1-4-2001) water treatment system, solid waste management system,] sanitation and sewerage system or any other public facility of a similar nature as had been notified by the CBDT in this behalf in the Official Gazette [i.e., (1) Mass Rapid Transit System; (2) Light Rail Transit System; (3) Expressways; (4) Intra-urban/semi-urban roads like ring roads/urban bypasses/fly-overs; (5) Bus and truck terminals; (6) Subways; and (7) Road dividers vide Notification No. SO 254(E), dated 14-3-2000; and (8) Multilevel computerized car parking vide Notification No. SO 1692, dated 13-7-2000] and which fulfils the conditions specified in section 80-IA(4A) or 80-IA(4)(i) of the 1961 Act;
- (ii) (for assessment year 1999-2000) a project for generation or generation and distribution of electricity or any other form of power where such project starts generating power on or after 1-4-1993;
- (iii) (w. e. f. 1-4-2000) an industrial undertaking which—
 - (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period between 1-4-1993 and 31-3-2003;
 - (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period between 1-4-1999 and 31-3-2003;
- (iv) a project for providing telecommunication services on or after the 1-4-1995;
- (v) a project for housing which fulfils the conditions specified in section 80-IA(4F) or 80-IB(10) of the 1961 Act, for the time being in force;
- (vi) (w. e. f. 1-4-2000) an undertaking for developing, developing and operating or maintaining and operating an industrial park notified by the Central Government under section 80-IA(4)(iii) of the 1961 Act.

With regard to structures at port for storage, loading and unloading, etc., it had been clarified vide Circular No. 793, dated 23-6-2000 and Circular No. 10 of 2005, dated 16-10-2005 that such structures would be included in the definition of “port” if the following conditions are satisfied, up to assessment year 2001-02:—

- (a) the concerned port authority has issued a certificate that the said structures form part of the port, and
- (b) such structures have been built under the BOT or BOLT Schemes and there is an agreement that the same would be transferred to the said authority on the expiry of the time stipulated in the agreement.

For and from assessment year 2002-03, only clause (a) condition is to be satisfied.

Omission of section 10(23G) of 1961 Act.—*The Finance Act, 2006.*—By the Finance Act, 2006 (21 of 2006), section 10(23G) was omitted (w. e. f. 1-4-2007).

The scope and effect of the above omission, as also amendment of section 115-O, have been elaborated in the following portion of the *Departmental Circular No. 14/2006, dated 28-12-2006*, as follows:—

‘8. *Removal of exemption of income from investment in infrastructure and other projects under section 10(23G).*—8.1 Under the provisions of section 10(23G), any income by way of dividends (other than dividends referred to in section 115-O), interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a co-operative bank from investments made on or after 1-6-1998, by way of shares or long-term finance in any enterprise or undertaking engaged in an approved eligible business, is exempt from tax. The eligible business are those referred to in section 80-IA(4), section 80-IAB(3), a housing project referred to in section 80-IB(10), a hotel project or a hospital project.

8.2 Section 10(23G) has been omitted from the Act, as a result of which income from existing as well as future investments in any eligible business will be taxable.

8.3 Consequential amendments have been made in section 115-O to omit references to section 10(23G).

8.4 *Applicability.*—Assessment year 2007-08 onwards. [Sections 4 and 25].’

INCOME ACCRUING OR ARISING TO ANY PERSON FROM ANY SOURCE IN LADAKH DISTRICT OR FROM OUTSIDE INDIA [Omitted s. 10(26A)]

Introduction under 1961 Act.—*The Finance (No. 2) Act, 1965.*—By the Finance (No. 2) Act, 1965 (15 of 1965), section 10(26A) was inserted (w. r. e. f. 1-4-1962).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 3P, dated 11-10-1965*, as follows:—

‘*Exemption from tax of persons resident in Ladakh district on income arising in Ladakh or outside India uptill the assessment year 1969-70.*—104. Under a new clause (26A) inserted in section 10 of the Income-tax Act by the Finance (No. 2) Act, 1965, with retrospective effect, persons other than employees of the Government, who are resident in the district of Ladakh, will not be liable to tax on any income assessable for

any assessment year up to and inclusive of the assessment year 1969-70, which accrues or arises to them in Ladakh or outside India. A person shall be deemed to be resident in Ladakh district if he satisfied the tests for residence laid down in sub-sections (1), (2), (3) and (4) of section 6 of the Income-tax Act in relation to his residence in Ladakh. For this purpose, references in the above-mentioned sub-sections to 'India' shall be construed to be references to the district of Ladakh, and reference to 'Indian company' shall be construed as a reference to a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir.'

Legislative amendments under 1961 Act.—I. The Finance (No. 2) Act, 1971.—By the Finance (No. 2) Act, 1971 (32 of 1971), section 10(26A) was amended (w. r. e. f. 1-4-1962 and w. r. e. f. 1-4-1970).

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 72, dated 6-1-1972*, as follows:—

'Exemption from tax of certain incomes of the residents of Ladakh.—89. Under section 10(26A), before its amendment by the Finance (No. 2) Act, 1971, income accruing or arising to any resident of Ladakh district from any source in that district or outside India was completely exempt from income-tax up to and including the assessment year 1969-70¹⁰. The exemption was available only in the case of persons, other than Government servants, who were resident in Ladakh district in the previous year relevant to the assessment year 1962-63. This concession was allowed in view of the position that the residents of Ladakh had suffered hardship and their trade had been adversely affected as a result of the Chinese aggression and it was necessary to allow them time to rehabilitate themselves. The strategic importance of the area was also kept in view in this connection. Since these considerations continue to be valid, the exemption from tax which was available in such cases up to and including the assessment year 1969-70 has been revived for a further period of five years, i.e., for the assessment years 1970-71 to 1974-75, by the amendment of section 10(26A) under section 4(b) of the Finance (No. 2) Act, 1971.

90. The provision in section 10(26A) was not applicable to Government servants. Under another provision, viz., that in section 10(26) members of Scheduled Tribes residing in specified areas in the north-eastern part of India are exempt from tax in respect of income arising to them in such areas and also in respect of income by way of dividends or interest on securities, whether arising within or outside such areas. Originally, this provision was not applicable in the case of Government servants. The exclusion of Government servants from the purview of the exemption was, however, held by the Supreme Court to be unconstitutional and, accordingly, the provision has since been modified through the Taxation Laws (Amendment) Act, 1970, so as to extend the tax concession to Government servants as well. For similar reasons, the tax concession available in the case of the generality of taxpayers in Ladakh district, has now been extended to Government servants who were resident there during 1961-62. This has been done with retrospective effect from the assessment year 1962-63. [The scope of the amendment has been explained in detail in Board's Circular No. 67, dated 23-9-1971].

II. The Finance (No. 2) Act, 1977.—By the Finance (No. 2) Act, 1977 (29 of 1977), section 10(26A) was amended (w. r. e. f. 1-4-1975).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 229, dated 9-8-1977*, as follows:—

'9. Exemption from tax of certain incomes of residents of Ladakh.—9.1 Under section 10(26A) of the Income-tax Act, before its amendment by the Finance (No. 2) Act, 1977, income accruing or arising to any resident of Ladakh district from any source in that district or outside India was completely exempt from income-tax up to and including the assessment year 1974-75. The exemption was available only in the case of persons who were resident in Ladakh district in the previous year relevant to the assessment year 1962-63.

9.2 Section 10(26A) has been amended by the Finance (No. 2) Act, 1977, retrospectively from 1st April, 1975, to revive this exemption for a further period of five years, i.e., for the assessment years 1975-76 to 1979-80. [Section 5(b) of the Finance (No. 2) Act, 1977].

III. The Finance Act, 1980.—By the Finance Act, 1980 (13 of 1980), section 10(26A) was amended (w. e. f. 1-4-1980).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 268, dated 28-4-1980*, as follows:—

'Exemption from tax on certain incomes of residents of Ladakh.—5. Under section 10(26A) of the Income-tax Act, income accruing or arising to any resident of Ladakh district from any source in that district or outside India is completely exempt from income-tax. The exemption is available only in the case of persons who were residents in Ladakh district in the previous year relevant to the assessment year 1962-63. Under the

¹⁰ Now, up to assessment year 1988-89.

provision as it stood prior to its amendment by the Finance Act, 1980, this exemption was available up to and including the assessment year 1979-80.

Section 10(26A) has been amended by the Finance Act, 1980, to revive this exemption for a further period of three years, i.e., for the assessment years 1980-81 to 1982-83. [Section 3(b) of the Finance Act, 1980]’.

IV. The Finance Act, 1983.—By the Finance Act, 1983 (11 of 1983), the following amendments were made—

- section 10(26A) was amended (w. e. f. 1-4-1983);
- Explanation to section 10(26A) was numbered (w. r. e. f. 1-4-1980) as *Explanation 1* thereof; and
- Explanation 2 to section 10(26A) was inserted (w. r. e. f. 1-4-1980).

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 372, dated 8-12-1983*, as follows:—

‘17. Exemption in respect of residents of Ladakh.—**17.1** Under section 10(26A) of the Income-tax Act, income accruing or arising to persons who were residents of the district of Ladakh in the previous year relevant to the assessment year 1962-63 is exempt from income-tax up to the assessment year 1982-83, if such income is derived from any source in the district of Ladakh or outside India.

17.2 The Finance Act, 1983, has extended for a period of three years, that is, for the assessment years 1983-84 to 1985-86, the exemption from income-tax under section 10(26A) of the Act in the case of residents of Ladakh. The amendment made by the Finance Act, 1983, also clarifies that the district of Ladakh will include all the areas comprised in that district on 30th June, 1979, that is, the date after which the said district was bifurcated.

17.3 The amendment extending the exemption from income-tax in the case of residents of the district of Ladakh takes effect from 1st April, 1983, and will, accordingly, apply in relation to the assessment year 1983-84 and subsequent years. The second amendment clarifying that the district of Ladakh will include all the areas comprised in that district on 30th June, 1979, takes effect from 1st April, 1980, and will, accordingly, apply in relation to the assessment year 1980-81 and subsequent years. [Section 5(e) of the Finance Act, 1983]’.

V. The Finance Act, 1985.—By the Finance Act, 1985 (32 of 1985), section 10(26A) was amended (w. e. f. 1-4-1985).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 421, dated 12-6-1985*, as follows:—

‘10. Exemption in respect of residents of Ladakh.—**10.1** Under an existing provision, income accruing or arising to persons who were residents of the district of Ladakh in the accounting year relevant to the assessment year 1962-63 is exempt from income-tax up to the assessment year 1985-86, if such income is derived from any source in the district of Ladakh or outside India.

10.2 The Finance Act, 1985, has extended this exemption for a further period of three years, that is, for the assessment years 1986-87 to 1988-89. [Section 4(c) of the Finance Act, 1985]’.

Exemption in respect of income from any source of a Ladakh district resident person.—This provision exempted any income accruing or arising to any person resident in the district of Ladakh in the previous year from any source in the district of Ladakh or outside India in any previous year relevant to any assessment year commencing before 1-4-1989. In this regard, it was pertinent to note that the provision was originally not applicable to an individual who was in the service of Government; however, this condition has been omitted from the introduction of the provision in view of the Supreme Court decision in *S.K. Dutta v. Lawrence Singh Ingty*, (1968) 68 ITR 272 (SC). In this regard, reference may be made to *Circular No. 67, dated 23-9-1971*:—

“References have been received by the Central Board of Direct Taxes seeking information regarding the exemption from income-tax available to residents of Ladakh in general and Government officers stationed there in particular. The position in law as obtaining at present is explained in the following paragraphs:

2. The provisions in the Income-tax Act providing for exemption of certain incomes in the case of residents of Ladakh are incorporated in clause (26A) of section 10 of the Income-tax Act, 1961 (43 of 1961), as amended recently by the Finance (No. 2) Act, 1971 (32 of 1971). Under this clause, as it stood prior to its amendment, income accruing or arising to a resident of Ladakh district from any source in that district or outside India was completely exempt from income-tax for all assessment years from 1962-63 to 1969-70 (inclusive). The exemption was available only in the case of persons other than Government servants, who, having been resident in Ladakh district in the previous year relevant to the assessment year 1962-63, were also resident in that district during the relevant previous year for which the exemption is sought.

3. Under the relevant provision, an individual is considered to be resident in Ladakh in any previous year if he—

- (a) was in that district in that year for a period or periods amounting in all to 182 days or more; or
- (b) maintained or caused to be maintained for him a dwelling place in that district for a period or periods amounting in all to 182 days or more in that year, and had been in that district for 30 days or more in that year; or
- (c) having within the four years preceding the relevant year been in that district for a period or periods amounting in all to 365 days or more, was in that district for a period or periods amounting in all to 60 days or more in that year.

A Hindu undivided family, a firm or other association of persons would normally be presumed to be resident in that district in the relevant previous year except where, during that year, the control and management of its affairs was situated wholly outside that district. A company would be deemed to be resident in that district if it is a company registered under any law in force in the State of Jammu & Kashmir and had its registered office in that district in the relevant previous year, or if the control and management of its affairs was, during that year, wholly situated in that district irrespective of its place of registration.

4. Under the amendment to clause (26A) of section 10 by the Finance (No. 2) Act, 1971 (32 of 1971), the period of exemption has been extended by another five years, namely, the assessment years 1970-71 to 1974-75.¹¹ Further, the exemption has now been made available also to Government servants, with retrospective effect from the assessment year 1962-63, subject to the fulfilment of other conditions mentioned in the provision, as already explained. The effect of this change would be that Government employees who were resident in the district of Ladakh (in accordance with the criteria set forth in para. 3 above) during the financial year 1961-62, which is the “previous year” relevant to the assessment year 1962-63, and were also similarly resident in that district in a later financial year, will now be entitled to claim refund of the tax paid by them in respect of their income of such later financial year which arose from a source in that district or outside India (but not in respect of their income arising from any source in India excluding Ladakh).

5. Any Government employee who comes within the scope of these provisions may address his claim for refund to the Income-tax Officer by whom he is assessed. In a case where no assessment has been made for the relevant year (due to the correct amount of tax having been deducted at source from the salary), the claim should ordinarily be made *before* (i) expiry of four years from the end of the assessment year, where it relates to the assessment year 1967-68 or any earlier year, or (ii) 1-4-1972, where it relates to the assessment year 1968-69 or 1969-70. Claims made in such cases up to 31-3-1972 will accordingly be in time for the assessment years 1967-68, 1968-69 and 1969-70 *i.e.*, in respect of the income of the financial years 1966-67, 1967-68 and 1968-69. In regard to earlier years, the statutory time limit for making the claim has already expired. In cases where an assessment has been made, the claim for rectification of such assessment may be made any time up to four years from the date of the assessment. Even on this basis, some claims may be out of time. However, having regard to the special circumstances in which the claim could not be made earlier, the Board will be prepared to consider relaxation of the time limit in such cases. The necessary requests in this behalf may be addressed to the Secretary, Central Board of Direct Taxes, New Delhi, for this purpose.”

Further, *vide Board's F. No. 212/98/72-IT (A-II), dated 18-11-1972*, the CBDT had directed that in all cases of Government servants where tax has been deducted at source under section 192 of the 1961 Act from income chargeable to tax for the assessment years 1961-63 to 1971-72 but who have since become exempt from tax for one or more of those assessment years as a result of amendment of section 10(26A) of the 1961 Act with retrospective effect from 1st April, 1962, by the Finance (No. 2) Act, 1971 (32 of 1971), the Income-tax Officers having jurisdiction over them may condone the delay in filing the application for refund under section 239 of the 1961 Act and dispose of the same in accordance with law.

A person was deemed to be resident in the district of Ladakh if he fulfils the requirements of section 6(1) or 6(2) or 6(3) or 6(4) of the 1961 Act, as the case may be, subject to the following modifications:

- (i) References to India shall be construed as “references to the district of Ladakh”; and
- (ii) Reference to Indian company shall be construed as “reference to a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir and having its registered office in the district of Ladakh in that year”.

It had been clarified that the references to the district of Ladakh was to be construed as references to the area comprised in the said district on 30-6-1979.

11. In this context, the provisions of the 1978-inserted *Explanation* to section 6(1) of the 1961 Act are relevant for assessment years 1979-80 to 1982-83; those of the 1982-substituted *Explanation* to section 6(1) of the 1961 Act are relevant for assessment years 1983-84 to 1988-89.

However, this provision would not apply in case of any such person unless he was resident in that district in the previous year relevant to the assessment year commencing on 1-4-1962.

Omission of section 10(26A) of 1961 Act.—*The Finance Act, 2023.*—By the Finance Act, 2023 (8 of 2023), section 10(26A) has been omitted (w. e. f. 1-4-2023).

‘13. *Omission of certain redundant provisions of section 10 of the Act.*—13.1. Section 10 of the Act provides for incomes which are not included in total income. Clauses (23BBF), (23EB), (26A), (41) and (49) of this have already been sunset.

13.2. Hence, Finance Act 2023 has omitted clauses (23BBF), (23EB), (26A), (41) and (49) of section 10 of the Act.

Applicability: This amendment has taken effect from 1st April, 2023.’

WINNINGS FROM LOTTERIES IN THE STATE OF SIKKIM [Omitted s. 10(26AA)]

Introduction under 1961 Act.—*The Finance Act, 1989.*—By the Finance Act, 1989 (13 of 1989), section 10(26AA) was inserted (w. e. f. 1-4-1990).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 550, dated 1-1-1990*, as follows:—

‘29. *Extension of Direct Tax Laws to the State of Sikkim.*—29.1 Hitherto the Income-tax Act, 1961, the Wealth-tax Act, 1957, and the Gift-tax Act, 1958, did not apply to the State of Sikkim. By a notification of the Government of India, Ministry of Home Affairs No. S.O. 1028(E), dated 7th November, 1988, and the Central Government’s Notification No. S.O. 148(E), dated 23rd February, 1989, issued in pursuance thereof, the Income-tax Act, 1961, the Wealth-tax Act, 1957, and the Gift-tax Act, 1958, had been extended to the State of Sikkim. The Income-tax Act had been extended with effect from the 1st April, 1989, i.e., from the assessment year 1989-90. In view of certain difficulties pointed out by the Government of Sikkim, the Finance Act has provided that the Income-tax Act, 1961, will now stand extended to the State of Sikkim from the 1st day of April, 1990, and will, accordingly, apply in relation to the assessment year 1990-91 and subsequent years. Section 26 of the Finance Act, 1989, also provides that any law corresponding to the Income-tax Act, 1961, which was in force in the State of Sikkim will be deemed never to have ceased to have effect in relation to the previous year commencing on 1st April, 1988, and ending on the 31st of March, 1989. Such a provision became necessary as the earlier notification issued by the Ministry of Home Affairs had extended the Income-tax Act, 1961, to the State of Sikkim with effect from 1st April, 1989, i.e., from the assessment year 1989-90 and, accordingly, the law already in existence in the State of Sikkim stood repealed from 1st April, 1988.

29.2 The Wealth-tax Act, 1957, and the Gift-tax Act, 1958, stand extended to the State of Sikkim pursuant to the Central Government’s Notification No. S.O. 148(E), dated 23rd February, 1989. The Wealth-tax Act, 1957, will, therefore, apply to the net wealth of the residents of Sikkim on the valuation date being 31st March, 1990, or thereafter. The Gift-tax Act, 1958, also will have effect from 1st April, 1990, so as to apply in respect of gifts made by a person residing in the State of Sikkim on or after the first day of April, 1989.

29.3 A new clause (26AA) has been inserted in section 10 of the Income-tax Act, 1961, whereby winnings from lotteries in the hands of residents of Sikkim has been exempted in respect of payments received by them pursuant to agreements entered into up to 28th day of February, 1989, between the State Government of Sikkim and the organizing agents of lotteries.’

Exemption in respect of winnings from lotteries in the State of Sikkim.—This provision exempted any income of a person resident in the State of Sikkim in any previous year by way of winnings from any lottery, the draw of which was held in pursuance of any agreement entered into on or before 28-2-1989 between the State Government of Sikkim and the organizing agents of such lottery.

A person was deemed to be resident in the State of Sikkim if he fulfils the requirements of section 6(1) or 6(2) or 6(3) or 6(4) of the 1961 Act, as the case may be, subject to the following modifications:

- (i) References to India shall be construed as “references to the State of Sikkim”; and
- (ii) Reference to Indian company shall be construed as “reference to a company formed and registered under any law for the time being in force in the State of Sikkim and having its registered office in that State in that year”.

Omission of section 10(26AA) of 1961 Act.—*The Finance Act, 1997.*—By the Finance Act, 1997 (26 of 1997), section 10(26AA) was omitted (w. e. f. 1-4-1998).

For the scope and effect of the above omission, reference may be made to paras. 14 to 14.5 of the *Departmental Circular No. 763, dated 18-2-1998*.

INCOME FROM BUSINESS OF LIVESTOCK BREEDING OR POULTRY OR DAIRY FARMING [Omitted s. 10(27)]

Introduction under 1961 Act.—*The Finance Act, 1964.*—By the Finance Act, 1964 (5 of 1964), section 10(27) was inserted (w. e. f. 1-4-1964).

The scope and effect of the above insertion had been elaborated in the following portion of the *Departmental Circular No. 20, dated 7-7-1964*:—

‘Exemption from tax of income of business of livestock breeding, etc., assessable for the assessment years 1965-66, 1966-67 or 1967-68.—73. A new clause (27) has been inserted in section 10 of the Income-tax Act, by section 6(iv) of the Finance Act, 1964, exempting from tax any income derived from a business of livestock breeding or poultry or dairy farming which is assessable for the assessment years 1965-66, 1966-67 or 1967-68. This exemption will be available even if the assessee commenced his business at any time prior to the previous year for the assessment year 1965-66.’

Legislative amendments under 1961 Act.—*I. The Finance (No. 2) Act, 1967.*—By the Finance (No. 2) Act, 1967 (20 of 1967), section 10(27) has been amended (w. e. f. 1-4-1967).

The scope and effect of the above amendment have been elaborated in the following portion of the *Departmental Circular No. 5P, dated 9-10-1967*:—

‘Continuance of the existing exemption from tax of income from business of livestock breeding, poultry or dairy farming, beyond the assessment year 1967-68, for an indefinite period.—40. Under the original provisions of clause (27) of section 10 of the Income-tax Act, any assessee deriving income from the business of livestock breeding or poultry or dairy farming is exempt from tax on such income for the three assessment years 1965-66, 1966-67 and 1967-68. Having regard to the continuing need of our country for the growth and development of such activities to supplement our food resources, the Finance (No. 2) Act, 1967, has amended the provision to secure that the exemption provided by it is continued beyond the assessment year 1967-68 for an indefinite period.’

II. The Finance Act, 1975.—By the Finance Act, 1975 (25 of 1975), section 10(27) has been omitted (w. e. f. 1-4-1976).

For the scope and effect of the above omission, reference may be made to paras. 20 and 21 of the *Departmental Circular No. 169, dated 23-6-1975*.

Exemption in respect of income from livestock breeding, etc.—For assessment years 1965-66 to 1975-76, section 10(27) of the 1961 Act provided for exemption to income derived from the business of live-stock breeding, or poultry or dairy farming.

The above provision excluded in express terms only ‘any income derived from a business of live-stock breeding or poultry or dairy farming’. It did not exclude the business of live-stock breeding or poultry or dairy farming from the operation of the Act. In that view of the matter, the losses suffered by an assessee on account of breeding of horses and pigs were held admissible for deduction in computing the total income [*Royal Calcutta Turf Club v. CIT*, (1983) 144 ITR 709 (Cal)].

For assessment years 1976-77 to 1985-86, provisions for straight deduction in respect of such income were made in section 80JJ of the 1961 Act. Consequently, section 10(27) of the 1961 Act was omitted [see, *CIT v. Venkateswara Hatcheries (P.) Ltd.*, (1999) 237 ITR 174, 179-80, 181 (SC)].

AMOUNT ADJUSTED OR PAID IN RESPECT OF A TAX CREDIT CERTIFICATE [Omitted s. 10(28)]

Introduction under 1961 Act.—*The Finance Act, 1965.*—By the Finance Act, 1965 (10 of 1965), section 10(28) was inserted (w. e. f. 1-4-1965).

For the scope and effect of the above insertion, reference may be made to paras. 77 to 80 of the *Departmental Circular No. 3P, dated 11-10-1965*.

Legislative amendment under 1961 Act.—*I. The Finance (No. 2) Act, 1965.*—By the Finance (No. 2) Act, 1965 (15 of 1965), section 10(28) was substituted (w. e. f. 11-9-1965).

For the scope and effect of the above substitution, reference may be made to paras. 77 to 80 of the *Departmental Circular No. 3P, dated 11-10-1965*.

In *International Instruments Pr. Ltd. v. CIT*, (1982) 133 ITR 283 (Karn), it has been held that the exclusionary provisions of section 10(28) of the 1961 Act were inserted only by way of abundant caution, as, even without such a provision, the amount of tax credit certificate cannot be treated as income liable to tax under the Income-tax Act.

Omission of section 10(28) of 1961 Act.—*The Finance Act, 1997.*—By the Finance Act, 1997 (26 of 1997), section 10(28) was omitted (w. e. f. 1-4-1998).

For the scope and effect of the above omission, reference may be made to paras. 14 to 14.5 of the *Departmental Circular No. 763, dated 18-2-1998*.

CERTAIN INCOMES OF A STATUTORY AUTHORITY FOR MARKETING OF COMMODITIES [Omitted s. 10(29)]

Introduction under 1961 Act.—*The Finance (No. 2) Act, 1967.*—By the **Finance (No. 2) Act, 1967** (20 of 1967), **section 10(29)** was inserted (w. e. f. 1-4-1968).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 5P, dated 9-10-1967*, as follows:—

‘Income of marketing authorities.—**72.** An authority constituted under the law for the time being in force for the marketing of commodities is entitled, under section 83 of the Income-tax Act, to a rebate of tax on the income derived by it from the letting of godowns or warehouses for storage, processing, or facilitating the marketing of commodities. This provision is to be replaced with effect from the 1st April, 1968 (*i.e.*, for and from the assessment year 1968-69) by a provision in the new clause (29) of section 10 of the Income-tax Act under which the whole of the income mentioned above will be excluded in computing the total income of the marketing authority.’

Exemption in respect of certain incomes of a statutory authority for marketing of commodities.—An analysis of section 10(29) of the 1961 Act showed that in order to claim exemption under the provision, three conditions have to be fulfilled: (i) the assessee must be an authority constituted under any law, for the time being in force, for the marketing of commodities; (ii) it should derive income from the letting of godowns or warehouses; and (iii) the letting must be for the purpose of storage, processing or facilitating the marketing of commodities [see, *CIT v. Karnataka State Warehousing Corporation Ltd.*, (1990) 185 ITR 25, 27 (Karn)].

Section 10(29) of the 1961 Act applies to an authority constituted for the marketing of commodities and, evidently, such authority will specifically be a business enterprise. *Ex hypothesi*, the term ‘authority’ there cannot possibly be construed as referring to an authority having *quasi*-governmental powers. Any legal entity or juristic personality constituted by law for the purpose of marketing commodities would be an ‘authority’ within the meaning of section 10(29) of the 1961 Act. The U.P. State Warehousing Corporation [*U.P. State Warehousing Corporation v. ITO*, (1974) 94 ITR 129 (All), **affirmed in** *Union of India v. U.P. State Warehousing Corporation*, (1991) 187 ITR 54 (SC); *CIT v. U.P. State Warehousing Corporation*, (1978) CTR (All) 455; *CIT v. U.P. State Warehousing Corporation*, (1992) 195 ITR 273 (All); *CIT v. U.P. (Rohilkhand) Tarai Veej and Vikas Nigam*, (2004) 141 Taxman 356 (All); *U.P. (Rohilkhand Tarai) Ganna Beej Evam Vikas Nigam v. CIT*, (2006) 154 Taxman 539 (All)] or the Haryana Warehousing Corporation [*CIT v. Haryana Warehousing Corporation*, (1978) 112 ITR 374 (Punj)] or the Karnataka State Warehousing Corporation [*Addl. CIT v. Karnataka State Warehousing Corporation*, (1980) 125 ITR 136 (Karn)] or the Gujarat State Warehousing Corporation [*CIT v. Gujarat State Warehousing Corporation*, (1980) 124 ITR 282 (Guj)] or the Central Warehousing Corporation [*CIT v. Central Warehousing Corpn.*, (1985) 156 ITR 407 (Del)] is such an “authority”. Also see, *CIT v. Haryana Warehousing Corporation*, (2009) 314 ITR 215 (Punj).

To be an “authority”, an entity has to possess one or more of the following characteristics:

- (a) exercise of governmental or *quasi*-governmental power;
- (b) performance of governmental or *quasi*-governmental functions;
- (c) power to have its directions enforced with punishment, *i.e.*, having a right to command and to be obeyed;
- (d) exercise of general or particular statutory power;
- (e) power to make regulations, rules or bye-laws having the force of law.

The mere fact that a juristic personality is created under any particular statute or law having as its direct or indirect object, marketing of commodities, will not make the entity an “authority” within the meaning of section 10(29) of the 1961 Act unless such juristic entity or personality have some other attributes which would entitle it to claim to be an “authority”. In this view of the matter, a joint stock company, incorporated primarily for carrying on ordinary business or commercial activities, cannot come within the meaning of an “authority” referred to in section 10(29) of the 1961 Act even though it earns income from letting out its godowns [*Singhal Bros. P. Ltd. v. CIT*, (1980) 124 ITR 147 (Cal)]. The Calcutta High Court in this case **expressed its dissent** with the too broad proposition laid down by the Allahabad High Court in *U.P. State Warehousing Corporation’s* case [(1974) 94 ITR 129 (All)] to the effect that if an entity is created by a statute, primarily or specifically for the purpose of marketing of commodities, it will be, on the plain language, an “authority” within the meaning of these provisions. Thus, a company incorporated under the Companies Act, 1956, is not an “authority” constituted under any law and cannot take the benefit of concession granted under section 10(29) of the 1961 Act [*Krishna Cotton and General Mills (P.) Ltd. v. CIT*, (1989) 177 ITR 350 (Punj)]. Similarly, the assessee-society registered under the Co-operative Societies Act, 1912, has been held not an “authority” within the

meaning of section 10(29) of the 1961 Act [*Ludhiana Co-operative Marketing Society Ltd. v. CIT*, (1989) 177 ITR 42 (Punj)].

The term 'marketing of commodities' has been used at two places. In the beginning, it has been used to indicate the purpose for which the authority should have been constituted. In the last clause, this term has been used to indicate the purposes for which godowns or warehouses are to be let in order to gain exemption. The expression "for facilitating the marketing of commodities" cannot possibly refer to the functions of buying and selling on one's own behalf. The use of the word "facilitating" seems to refer to functions like gradation or standardization in the warehouses or giving of facilities by way of distribution by the authorities running the warehouses of goods or commodities belonging to others. Intrinsically, the term "marketing of commodities" excludes an activity done by the assessee for its own benefit. The word 'marketing' has been used in the wider sense to include the various activities, which generally go to form the trade of marketing.

There is a clarification in section 10(29) of the 1961 Act about the income which is exempt. The clarification is laid down by the words 'derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities'. Therefore, to claim exemption, the assessee has to prove that the income is derived from the letting of godowns or warehouses for the purposes specified in section 10(29) of the 1961 Act, i.e., storage, processing or facilitating the marketing of commodities. If the letting of godowns or warehouses is for any other purpose, and if the income is derived from any other source, such income is not exempt under clause (29) of section 10 of the 1961 Act [*CIT v. Orissa State Warehousing Corporation*, (1993) 201 ITR 729, 733-34 (Ori)]. Also see, *Addl. CIT v. Rajasthan State Warehousing Corporation*, (1987) 167 ITR 694 (Raj); *CIT v. Rajasthan State Warehousing Corporation*, (1994) 210 ITR 906, 915-16 (Raj), **SLP granted**: (1994) 207 ITR (St.) 37 (SC); *Central Warehousing Corporation v. Asst. CIT*, (2012) 20 taxmann.com 394 (Del). Fumigation charges, disinfestations charges, supervisory charges, weighbridge receipt, income from sale of tender forms and interest collected on belated refund of advances concerned by the assessee from its customers to whom warehouse was let out for purpose of storage, processing and facilitating marketing of commodities would be eligible for exemption [*Karnataka State Warehousing Corporation v. Deputy CIT*, (2012) 18 taxmann.com 10 (Karn); *Tamilnadu Warehousing Corporation v. ITO*, (2014) 363 ITR 1 (Mad)].

The Orissa and Rajasthan decisions [201 ITR 729 (Ori) and 210 ITR 906 (Raj)] have been **affirmed in** *Orissa State Warehousing Corporation v. CIT*, (1999) 237 ITR 589 (SC). The Supreme Court has held that section 10(29) of the 1961 Act is categorical in its language and this exemption is applicable only in the circumstances as envisaged under that section. Needless to say, that the expression 'any income' as appearing in the body of that section is restrictive in its application by reason of the user of the expression 'derived from'. In that view of the matter, the interest received by the assessee from banks on fixed deposits as also income derived from procurement of grain for FCI/State Government and miscellaneous income were not exempt under section 10(29) of the 1961 Act. In taking the above view, the Supreme court has **approved** *M.P. Warehousing Corporation v. CIT*, (1982) 133 ITR 158 (MP); *M.P. State Warehousing Corp. v. CIT*, (1984) 145 ITR 420 (MP) and has **distinguished** *CIT v. Ahmedabad Maskati Cloth Dealers Co-operative Warehouses Society Ltd.*, (1986) 162 ITR 142 (Guj), *CIT v. South Arcot District Co-operative Marketing Society Ltd.*, (1989) 176 ITR 117 (SC) and *Union of India v. U.P. State Warehousing Corporation*, (1991) 187 ITR 54 (SC). The above Apex Court decision has been **followed in** *CIT v. Rajasthan State Warehousing Corporation*, (2001) 250 ITR 218, 219, 222 (Raj); *CIT v. Rajasthan State Warehousing Corporation*, (2001) 169 CTR (Raj) 143, 144; *Haryana Warehousing Corporation v. CIT*, (2007) 164 Taxman 621 (Punj); *Haryana Warehousing Corporation v. Asst. CIT*, (2010) 328 ITR 23 (Punj); *Tamilnadu Warehousing Corporation v. ITO*, (2014) 363 ITR 1 (Mad). In *CIT v. Karnataka State Warehousing Corporation Ltd.*, (1990) 185 ITR 25 (Karn), the assessee was held not entitled to exemption under section 10(29) of the 1961 Act in respect of income derived by it from services rendered in respect of goods not stored in the assessee's own godown.

In *CIT v. Gujarat State Warehousing Corporation Ltd.*, (2000) 245 ITR 1, 2 (SC), it has been found that there was a **conflict between the two decisions of the Supreme Court**, namely, *Union of India v. U.P. State Warehousing Corporation*, (1991) 187 ITR 54 (SC) and *Orissa State Warehousing Corporation v. CIT*, (1999) 237 ITR 589 (SC). Therefore, the matter has been referred to the larger Bench where the Supreme Court was of the opinion that it was not necessary for referring the matter to a larger Bench, since the question for consideration, at that stage, was whether in refusing the application filed under section 256(2) of the 1961 Act, the High Court has failed to exercise jurisdiction vested in law [*CIT v. Gujarat State Warehousing Corporation Ltd.*, (2001) 248 ITR 12, 13-14 (SC)]. Though, the larger Bench *prima facie* did not find any conflict between the two decisions referred to above, but it was not thought necessary to express any final opinion on the same since at that stage the court was only required to find out whether a question of law arose and pass appropriate directions requiring the Tribunal to make a statement of case and refer the question of law to the High Court for its consideration and answer. The larger Bench has held that a question of law arose from the order of the Tribunal and it has directed the Tribunal to refer the following question of law to the High Court of Gujarat for

being answered by the said High Court: 'Whether the claim of the assessee under section 10(29) of the Income-tax Act, 1961 (43 of 1961), in respect of interest income of ₹ 6,03,374, staff quarter rent of ₹ 5,147, miscellaneous income of ₹ 5,647 and supervision charges of ₹ 79,081 was rightly accepted by the CIT (Appeals) and confirmed by the Tribunal.'

In the facts of *West Bengal State Warehousing Corporation v. CIT*, (1986) 157 ITR 149 (Cal), the income of the assessee from warehousing was held eligible for the benefit under the then section 83, which was the predecessor of section 10(29) of the 1961 Act, the latter being operative for and from assessment year 1968-69. Such benefit was not claimed in the original assessment proceedings. It was subsequently claimed by resorting to rectification application under section 154 of the 1961 Act. It was held that the ITO had no jurisdiction to assess such income and, therefore, there was a glaring and obvious error which should be rectified.

Income eligible for exemption under section 10(29) of the 1961 Act is to be computed taking gross receipts from warehousing and Inland Container Depot without deducting the amount of depreciation [*Principal CIT v. Central Warehousing Corporation*, (2017) 399 ITR 212 (Del)].

Omission of section 10(29) of 1961 Act.—*The Finance Act, 2002.*—By the Finance Act, 2002 (20 of 2002), section 10(29) was omitted (w. e. f. 1-4-2003).

The scope and effect of the above omission have been elaborated in the following portion of the Departmental Circular No. 8 of 2002, dated 27-8-2002, as follows:—

'18. Withdrawal of exemption to the Authorities for Marketing of Commodities.—**18.1** Under the existing provisions contained in clause (29) of section 10, in the case of an authority constituted under law, for marketing of commodities, any income derived from the letting of godown or warehouses for storage, processing or facilitating the marketing of commodities, is exempt from payment of income-tax.

18.2 Through the Finance Act, 2002, clause (29) of section 10 has been omitted to withdraw the exemption provided to these marketing authorities. The income of Central Warehousing Corporation and the State Warehousing Corporations, which was hitherto exempt under clause (29), will, therefore, become taxable.

18.3 This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent assessment years. [Section 4(y)]'.

DIVIDEND INCOME, INCOME FROM UNITS OF MUTUAL FUND, ETC. [Ss. 10(34), 10(35) and omitted s. 10(33)]

Introduction to pre-2003 section 10(33) of 1961 Act.—*The Finance Act, 1997.*—By the Finance Act, 1997 (26 of 1997), section 10(33) was inserted (w. e. f. 1-4-1998).

For the scope and effect of the above insertion, reference may be made to paras. 16 to 16.10 of the Departmental Circular No. 763, dated 18-2-1998.

Legislative amendments to pre-2003 section 10(33) of 1961 Act.—**I. The Finance Act, 1999.**—By the Finance Act, 1999 (27 of 1999), section 10(33) has been substituted (w. e. f. 1-4-2000).

For the scope and effect of the above amendment, reference may be made to paras. 13 to 13.11 of the Departmental Circular No. 779, dated 14-9-1999.

II. The Finance Act, 2001.—By the Finance Act, 2001 (14 of 2001), proviso to section 10(33) has been inserted (w. r. e. f. 1-4-2000).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 14 of 2001, dated 9-11-2001, as follows:—

'20. Exemption in respect of income received in respect of units of UTI and Mutual Fund not to include income arising on transfer of such units.—**20.1** The Finance Act, 1999 (27 of 1999), amended clause (33) of section 10 so as to provide that any income by way of income received in respect of Units from the Unit Trust of India and units of a Mutual Fund specified in section 10(23D) shall not be included while computing the total income.

20.2 While making this amendment, the intention of the legislature was to tax the income received in respect of the units of the UTI and the Mutual Fund on lines similar to dividends distributed by a domestic company. The income received in respect of Units from UTI and Mutual Funds was exempted simultaneously with the insertion of the provisions of Chapter XII-E which provided that the UTI and MFs shall be liable to pay additional income-tax on such income distributed by them. However, the provisions of sub-clauses (ii) and (iii) of clause (33) of section 10 are being interpreted in a manner so as to claim exemption also in respect of capital gains arising on the sale of the units of UTI or Mutual Fund by the unit holders in the secondary market by treating the same as income received in respect of units of UTI or mutual funds.

20.3 Through the Finance Act, 2001 (14 of 2001), clause (33) of section 10 has, therefore, been amended so as to clarify that nothing contained in this clause shall apply to any income arising from the transfer of the units of UTI or Mutual Funds.

20.4 This amendment takes retrospective effect from 1-4-2000, and accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years. [Section 5(h)]'.

Omission of section 10(33) of 1961 Act.—By the Finance Act, 2002 (20 of 2002), section 10(33) has been omitted (w. e. f. 1-4-2003).

For the scope and effect of the above omission, reference may be made to paras. 52 to 52.7 and paras. 54 to 54.7 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

Introduction to section 10(34) of 1961 Act.—*The Finance Act, 2003.*—By the Finance Act, 2003 (32 of 2003), section 10(34) has been inserted (w. e. f. 1-4-2004).

For the scope and effect of the above insertion, reference may be made to paras. 58 to 58.8 of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*.

Legislative amendments to section 10(34) of 1961 Act.—**I. The Special Economic Zones Act, 2005.**—By the Special Economic Zones Act, 2005 (28 of 2005), *Explanation to section 10(34)* has been inserted (w. e. f. 10-2-2006).

II. The Finance Act, 2011.—By the Finance Act, 2011 (8 of 2011), *Explanation to section 10(34)* has been omitted (w. e. f. 1-6-2011).

The scope and effect of the above omission have been elaborated in the following portion of the *Departmental Circular No. 2/2012, dated 22-5-2012*, as follows:—

‘19.3.1 Further, the availability of exemption from dividend distribution tax in the case of SEZ Developers has been discontinued under the Income-tax Act as well as the SEZ Act for dividends declared, distributed or paid on or after 1st June, 2011.

19.3.2 Applicability.—These amendments take effect from 1st June, 2011. Corresponding amendments to clause (34) of section 10 of the Income-tax Act by omitting the Explanation and to the SEZ Act have been made effective from 1st June, 2011.’

III. The Finance Act, 2016.—By the Finance Act, 2016 (28 of 2016), proviso to section 10(34) has been inserted (w. e. f. 1-4-2017).

For the scope and effect of the above insertion, reference may be made to paras 14 to 14.4 of the *Departmental Circular No. 3 of 2017, dated 20-1-2017*.

IV. The Finance Act, 2020.—By the Finance Act, 2020 (12 of 2020), 2nd proviso to section 10(34) has been inserted (w. e. f. 1-4-2021).

For the explanation of the above insertion, refer the portion of the *Memorandum explaining the provisions in the Finance Bill, 2020 (Bill No. 26 of 2020)*.

Introduction to section 10(35) of 1961 Act.—*The Finance Act, 2003.*—By the Finance Act, 2003 (32 of 2003), section 10(35) has been inserted (w. e. f. 1-4-2004).

For the scope and effect of the above insertion, reference may be made to paras. 59 to 59.9 of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*.

Legislative amendment to section 10(35) of 1961 Act.—**I. The Finance Act, 2020.**—By the Finance Act, 2020 (12 of 2020), 2nd proviso to section 10(35) has been inserted (w. e. f. 1-4-2021).

For the explanation of the above insertion, refer the portion of the *Memorandum explaining the provisions in the Finance Bill, 2020 (Bill No. 26 of 2020)*.

Exemption in respect of dividend income, etc.—*Law up to assessment year 2002-03.*—Section 10(33) of the 1961 Act, which was originally enacted (w. e. f. 1-4-1998) by the Finance Act, 1997 (26 of 1997), exempted the following incomes:—

- (1) Dividend income referred to in section 115-O of the 1961 Act only. Reference may be made to *Pradeep Kar v. Asst. CIT*, (2009) 319 ITR 416 (Karn).
- (2) (w. e. f. 1-4-2000) Income received in respect of units from the UTI but **excluding** any income arising from transfer of such units. Reference may be made to *Eveready Industries India Ltd. v. CIT*, (2011) 334 ITR 413 (Cal).
- (3) (w. e. f. 1-4-2000) Income received in respect of units of a Mutual Fund specified under section 10(23D) of the 1961 Act but **excluding** any income arising from transfer of such units. Reference may be made to *Nirmal Bang Securities (P.) Ltd. v. Asst. CIT*, (2016) 382 ITR 93 (Bom).

The above provision was **omitted (w. e. f. 1-4-2003)** by the **Finance Act, 2002** (20 of 2002). Thus, exemption in respect of such incomes was become taxable for assessment year 2003-04.

It is to be noted that for and from assessment year 2004-05, the above provisions are bifurcated into two sections, i.e., section 10(34) and section 10(35) of the 1961 Act.

Law for assessment year 2003-04.—Due to the re-enactment of classical system of taxing dividend income, etc., exemption available under the then section 10(33) of the 1961 Act was taken away by omitting with effect from 1-4-2003 by the Finance Act, 2002.

Law for and from assessment year 2004-05 in case of dividend income.—**Section 10(34) of the 1961 Act** has been **inserted (w. e. f. 1-4-2004)** by the **Finance Act, 2003** (32 of 2003) which again provided exemption but only in case of any income by way of dividends referred to in section 115-O of the 1961 Act.

This provision does not say that dividend will be exempt in hands of shareholders only when dividend distribution tax is paid; on the other hand, it only says that as long as dividend is referred to in section 115-O of the 1961 Act, it will be exempt from tax [see, *R. Chitra v. Vice Chairman, ITSC*, (2019) 418 ITR 530 (Mad)]. As a corollary, in case of other species of dividend income, income-tax is leviable, subject to any exemption in that regard, if any [see, *Godrej & Boyce Manufacturing Co. Ltd. v. Deputy CIT*, (2017) 394 ITR 449 (SC)]. For example, in case of deemed dividend under section 2(22)(e) of the 1961 Act only, there is no payment of additional tax under section 115-O of the 1961 Act, thus, such dividend income was not exempt [*Dr. T.J. Jaikish P.V.S. Hospitals (P.) Ltd. v. CIT*, (2018) 403 ITR 256 (Ker); *Principal CIT v. Smt. Kayan Jamshid Pandole*, (2018) 100 taxmann.com 284 (Bom)]. It does not matter whether such dividend income was in the nature of business income or otherwise [*Principal CIT v. Haryana State Industrial and Infrastructure Development Corporation Ltd.*, (2019) 414 ITR 632 (Punj)].

It had also been clarified, between 10-2-2006 to 31-5-2011, that such income should not be included in the total income of a Development or entrepreneur also.

In view of insertion of section 115BBDA, **1st proviso to section 10(34) of the 1961 Act**, with effect from 1-4-2017, stipulated that exemption shall not be available to such dividend income which is chargeable to tax in view of section 115BBDA of the 1961 Act. The constitutional validity of this provision and section 115BBDA of the 1961 Act has been upheld in *Rajan Bhatia v. CBDT*, (2019) 101 taxmann.com 328 (Del).

Further, due to the re-enactment of classical system of dividend taxation (where shareholders are required to pay income-tax on amount of dividend), **2nd proviso** has been **inserted (w. e. f. 1-4-2021)** which prohibited exemption in respect of any dividend income received on or after 1-4-2020. However, if tax on such dividend income has been paid in view of section 115-O and section 115BBDA of the 1961 Act, then the provisions of section 10(34) of the 1961 Act would continue to apply.

Law for and from assessment year 2004-05 in case of income from units of a Mutual Fund or specified undertaking or specified company.—On lines similar to section 10(34), **section 10(35) of the 1961 Act** has been **inserted (w. e. f. 1-4-2004)** by the **Finance Act, 2003** (32 of 2003) which again provided exemption in the following cases:—

- (1) Income received in respect of units of a Mutual Fund specified under section 10(23D) of the 1961 Act but **excluding** any income arising from transfer of such units.
- (2) Income received in respect of units from the Administrator of the specified undertaking but **excluding** any income arising from transfer of such units.
- (3) Income received in respect of units from the specified company but **excluding** any income arising from transfer of such units.

It is to be noted that earlier, between assessment years 1998-99 to 2002-03, income received in respect of units from the UTI was exempted under the then section 10(33) of the 1961 Act. But due to the transfer and vesting of the undertaking (excluding the specified undertaking) of the UTI to the specified company; and the transfer and vesting of the specified undertaking in the Administrator, therefore, for and from assessment year 2004-05, separate provisions have been inserted in section 10(35) of the 1961 Act.

Thus, in view of the UTI (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002), “Administrator” **means** a person or a body of persons appointed as Administrator under section 7; “specified undertaking” **includes** all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund specified in the Schedule I; and “specified company” **means** a company to be formed and registered under the Companies Act, 1956 (1 of 1956) and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of transfer and vesting of the undertaking.

Further, due to the re-enactment of classical system of dividend taxation (where shareholders are required to pay income-tax on amount of dividend), **2nd proviso** has been **inserted (w. e. f. 1-4-2021)** which prohibited exemption in respect of any such income in respect of units received on or after 1-4-2020.

INCOME ARISING ON BUY-BACK OF SHARES BY DOMESTIC COMPANIES [S. 10(34A)]

Introduction under 1961 Act.—*The Finance Act, 2013.*—By the Finance Act, 2013 (17 of 2013), section 10(34A) has been inserted (w. e. f. 1-4-2014).

For the scope and effect of the above insertion, reference may be made to paras. 29 to 29.4 of the Departmental Circular No. 3/2014, dated 24-1-2014.

Legislative amendments under 1961 Act.—**I.** *The Finance (No. 2) Act, 2019.*—By the Finance (No. 2) Act, 2019 (23 of 2019), section 10(34A) has been amended (w. r. e. f. 5-7-2019).

For the explanation of the above amendment, refer the portion of the *Memorandum explaining the provisions in the Finance (No. 2) Bill, 2019 (Bill No. 55 of 2019)*.

II. *The Finance (No. 2) Act, 2024.*—By the Finance (No. 2) Act, 2024 (15 of 2024), proviso to section 10(34A) has been inserted (w. e. f. 1-10-2024).

For the explanation of the above insertion, refer the portion of the *Memorandum explaining the provisions in the Finance (No. 2) Bill, 2024 (Bill No. 55 of 2024)*.

Exemption in respect of income arising on buy-back of shares by domestic companies.—With effect from 1-4-2014, section 10(34A) of the 1961 Act has been inserted to exempt any income arising to a shareholder on account of buy-back of shares by the domestic companies referred to in section 115QA of the 1961 Act. In this regard, it is to be noted that up to 4-7-2019, the provisions were applicable in respect of buy-back of unlisted shares only.

The Finance (No. 2) Act, 2024 (15 of 2024) has, with effect from 1-10-2024,—(i) started treating any payment on buy-back of shares by domestic companies, which is in accordance with the provisions of section 68 of the Companies Act, 2013, as “dividend” under section 2(22)(f) of the 1961 Act; and, *inter alia*, (ii) started taxing such income in the hands of the shareholders by sunsetting the provisions of sections 115QA to 115QC of the 1961 Act (which taxed such income as additional income-tax in the hands of the payer company). Consequently, the provision contained in section 10(34A) of the 1961 Act exempting such income arising to a shareholder has also been taken away by inserting a proviso to section 10(34A) of the 1961 Act if any back-back of shares is taken up by the domestic company referred to in section 115QA of the 1961 Act on or after 1-10-2024.

DISTRIBUTED INCOME RECEIVED FROM A SECURITISATION TRUST [S. 10(35A)]

Introduction under 1961 Act.—*The Finance Act, 2013.*—By the Finance Act, 2013 (17 of 2013), section 10(35A) has been inserted (w. e. f. 1-4-2014).

For the scope and effect of the above insertion, reference may be made to paras. 31 to 31.4 of the Departmental Circular No. 3/2014, dated 24-1-2014.

Legislative amendment under 1961 Act.—*The Finance Act, 2016.*—By the Finance Act, 2016 (28 of 2016), the following amendments (w. e. f. 1-4-2017) have been made—

—proviso to section 10(35A) has been inserted; and

—*Explanation* to section 10(35A) has been amended.

For the scope and effect of the above amendments, reference may be made to paras. 10 to 10.5 of the Departmental Circular No. 3/2017, dated 20-1-2017.

Exemption in respect of distributed income received by an investor from a securitization trust.—Section 10(35A) of the 1961 Act, which has been inserted (w. e. f. 1-4-2014) by the Finance Act, 2013 (17 of 2013), grants exemption to an investor [as defined in *Explanation* below section 115TCA of the 1961 Act] of a securitization trust [as defined in *Explanation* below section 115TCA of the 1961 Act] of any income by way of distributed income referred to in section 115TA of the 1961 Act received from a securitization trust. However, this exemption has been taken away if such income is received by such investor on or after 1-6-2016.

LONG-TERM CAPITAL GAINS ARISING FROM TRANSFER OF AN EQUITY SHARE IN A COMPANY OR UNIT OF AN EQUITY ORIENTED FUND OR OF A BUSINESS TRUST WHERE STT HAS BEEN PAID [S. 10(38)]

Introduction under 1961 Act.—*The Finance (No. 2) Act, 2004.*—By the Finance (No. 2) Act, 2004 (23 of 2004), section 10(38) has been inserted (w. e. f. 1-4-2005).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 5 of 2005, dated 15-7-2005, as follows:—

‘*Insertion of new section 10(38).*—[50] (i) A new clause (38) has been inserted in section 10 providing for exemption for income from the long-term capital gains arising out of transfer of an equity share in company, or unit of an equity oriented fund, where such transfer takes place on or after the date on which Chapter VII

of the Finance (No. 2) Act, 2004 (23 of 2004), comes into force and such transaction is chargeable to securities transaction tax under the said Chapter.’.

Legislative amendments under 1961 Act.—I. The Finance Act, 2006.—By the Finance Act, 2006 (21 of 2006), the following amendments have been made—

- proviso to section 10(38)** has been inserted (w. e. f. 1-4-2007) before the *Explanation*; and
- Explanation (i) to section 10(38)** has been amended (w. e. f. 1-6-2006).

For the scope and effect of the above amendments, reference may be made to paras. 27 to 27.8 and 28 to 28.5 of the *Departmental Circular No. 14/2006, dated 28-12-2006*.

II. The Finance (No. 2) Act, 2014.—By the Finance (No. 2) Act, 2014 (25 of 2014), the following amendments (w. e. f. 1-4-2015) have been made—

- section 10(38)** has been amended; and
- 2nd proviso to section 10(38)** has been inserted before the *Explanation*.

For the scope and effect of the above amendments, reference may be made to paras. 36 to 36.5 of the *Departmental Circular No. 1/2015, dated 21-1-2015*.

III. The Finance Act, 2015.—By the Finance Act, 2015 (20 of 2015), **2nd proviso to section 10(38)** has been omitted (w. e. f. 1-4-2016).

For the scope and effect of the above omission, reference may be made to paras. 34 to 34.7 of the *Departmental Circular No. 19 of 2015, dated 27-1-2015*.

IV. The Finance Act, 2016.—By the Finance Act, 2016 (28 of 2016), the following amendments (w. e. f. 1-4-2017) have been made—

- 2nd proviso to section 10(38)** has been inserted; and
- Explanation to section 10(38)** has been substituted.

For the scope and effect of the above amendments, reference may be made to paras. 27 to 27.8 of the *Departmental Circular No. 3 of 2017, dated 20-1-2017*.

V. The Finance Act, 2017.—By the Finance Act, 2017 (7 of 2017), **3rd proviso to section 10(38)** has been inserted (w. e. f. 1-4-2018).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 2 of 2018, dated 15-2-2018*, as follows:—

‘11. Exemption of long-term capital gains tax under section 10(38) of the Income-tax Act.—11.1 Clause (38) of Section 10 of the Income-tax Act, before amendment by the Act, provided that the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, shall be exempt from tax if the transaction of sale is undertaken on or after 1-10-2014 and is chargeable to Securities Transaction Tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004).

11.2 With a view to prevent abuse of this exemption by certain persons for declaring their unaccounted income as exempt long-term capital gains by entering into sham transactions, section 10(38) of the Income-tax Act has been amended to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1-10-2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004). However, to protect the exemption in genuine cases, it is also provided that the Central Government shall notify transactions of acquisition for which the condition of chargeability to the Securities Transaction Tax on acquisition shall not be applicable.

11.3 Applicability.—This amendment takes effect from 1-4-2018 and will, accordingly, apply from assessment year 2018-19 and subsequent years’.

VI. The Finance Act, 2018.—By the Finance Act, 2018 (13 of 2018), **4th proviso to section 10(38)** has been inserted (w. e. f. 1-4-2019).

For the scope and effect of the above insertion, reference may be made to paras. 29 to 29.13 of the *Departmental Circular No. 8/2018, dated 26-12-2018*.

Exemption in respect of long-term capital gains arising from transfer of equity shares or units of an equity-oriented fund or a business trust.—Section 10(38) of the 1961 Act, which has been inserted (w. e. f. 1-4-2005) by the Finance (No. 2) Act, 2004 (23 of 2004), provides exemption in respect of income arising from transfer of any of the following long-term capital assets, namely:—

- (a) an equity share in a company.
- (b) a unit of an equity-oriented fund [as defined].

(c) (**w. e. f. 1-4-2015**) a unit of a *business trust* [as defined in section 2(13A) of the 1961 Act].

Conditions for availability of exemption.—Further, the above exemption is available in respect of such long-term capital assets only if the following additional conditions are satisfied cumulatively:—

- (1) Sale transaction of such equity share or such unit is entered into on or after 1-10-2004 [*vide Notification No. SO 1058(E), dated 28-9-2004*], the date on which Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004) has come into force.
- (2) Such transaction of sale is chargeable to securities transaction tax (STT) under Chapter VII of the Finance (No. 2) Act, 2004. **However**, as per **2nd proviso to section 10(38) of the 1961 Act, for and from assessment year 2017-18**, this provision of STT shall not apply to a transaction undertaken on a recognized stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency.

In *Uday Punj v. CIT*, (2012) 348 ITR 98 (Del), it has been held that if the transaction was entered into in the stock exchange, STT was chargeable on the transaction and in that case, it would be immaterial whether STT has been actually charged or not. On the other hand, if the transaction was not entered into in the stock exchange, it would be out of the purview of section 98 of the Finance (No. 2) Act, 2004 and, consequently, would not be eligible for exemption under section 10(38) of the 1961 Act.

“Equity-oriented fund”, defined.—For the purposes of section 10(38) of the 1961 Act, “equity-oriented fund” means a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% [(between 1-4-2005 and 31-5-2006) 50%] of the total proceeds of such fund; and which has been set up under a scheme of Mutual Fund specified under section 10(23D) of the 1961 Act. It is to be noted that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

Exemption when held allowable.—Exemption is allowable where shares are listed and no allegation of treaty shopping been proved where shareholding is being transferred from one foreign company to another in foreign country [*DIT v. Goodyear Tire & Rubber Co.*, (2014) 360 ITR 159 (Del), **SLP granted**: *DIT v. Goodyear Tire & Rubber Co.*, (2015) 64 taxmann.com 337 (SC)]. Similarly, exemption would be allowable where arrangement could not be said to be a colourable device or sham transaction and such arrangement was achieved within the four corners of law (i.e., tax planning) [*Bhoruka Engineering Inds. Ltd. v. Deputy CIT*, (2013) 356 ITR 25 (Karn)]. Also see, *Principal CIT v. Parasben Kasturchand Kochar*, (2021) 130 taxmann.com 176 (Guj), **SLP dismissed**: *Principal CIT v. Parasben Kasturchand Kochar*, (2021) 130 taxmann.com 177 (SC); *Principal CIT v. Gaurab Bagaria*, (2023) 453 ITR 513 (Raj); *Principal CIT v. Ritu Agarwal Shreeram Bhawan*, (2023) 453 ITR 520 (Raj); *Principal CIT v. Rajat Finvest*, (2023) 149 taxmann.com 161 (Del); *Principal CIT v. Sandipkumar Parsottambhai Patel*, (2023) 150 taxmann.com 192 (Guj).

Exemption could not be denied on ground that shares have been converted from stock-in-trade to capital asset and it has become a long-term capital asset after such conversion [*CIT v. Express Securities (P.) Ltd.*, (2014) 364 ITR 488 (Del); *Deeplok Financial Services Ltd. v. CIT*, (2017) 393 ITR 395 (Cal)]. Thus, where assessee-company held shares as long-term investment, profit on sale of share was to be treated as long-term capital gain, and not as business income, and, hence, assessee was entitled for exemption [*CIT v. Stargate Investments (P.) Ltd.*, (2015) 55 taxmann.com 193 (Mad); *Principal CIT v. New India Assurance Co. Ltd.*, (2018) 91 taxmann.com 433 (Bom)].

Where assessee provided all details of purchase and sales of shares to the AO along with contract notes for purchase and sale, demat account and bank statement and, furthermore no incriminating material were found during survey conducted in premises of assessee, AO could not deny claim under section 10(38) of the 1961 Act merely by relying on statements of accommodation entry providers which were recorded much before the date of survey [*Principal CIT v. Dipansu Mohapatra*, (2023) 149 taxmann.com 99 (Ori)].

Reference may also be made to *Swastik Safe Deposit and Investments Ltd. v. Asst. CIT*, (2019) 104 taxmann.com 335 (Bom), **SLP dismissed**: *Asst. CIT v. Swastik Safe Deposit and Investments Ltd.*, (2020) 114 taxmann.com 314 (SC); *Principal CIT v. Vernan (P.) Trust*, (2019) 107 taxmann.com 432 (Bom), **SLP dismissed**: *Principal CIT v. Vernan (P.) Trust*, (2019) 107 taxmann.com 433 (SC); *Principal CIT v. Gopal Srinivasan*, (2020) 429 ITR 593 (Mad).

Exempt income under section 10(38) of 1961 Act to be taken into account for purposes of computing book profits under section 115JB of 1961 Act.—With effect from 1-4-2007, 1st proviso to section 10(38) of the 1961 Act mandated that income which is exempt under section 10(38) of the 1961 Act has to be taken into account in computing the book profit and income-tax payable under section 115JB of the 1961 Act.

In *CIT v. Stock Home India Ltd.*, (2014) 369 ITR 250 (Punj), it has been held that since the assessee was unaware of amendment made during the assessment year 2007-08 whereby long-term capital gains were to be

taken into consideration while determining book profits under section 115JB of the 1961 Act, penalty for concealment could not be imposed.

Restrictive exemption with respect to shares of penny stock companies.—Where assessee had purchased shares of penny stocks companies at a lesser amount and sold such shares within a year at much higher amount and since he had not tendered any cogent evidence to explain as to how shares in an unknown company had jumped to such higher amount in no time and also failed to provide details of person who purchased said shares, said transaction was an attempt to hedge undisclosed income as long-term capital gains. Thus, exemption was not allowable [*Sanjay Bimalchand Jain v. Principal CIT*, (2018) 89 taxmann.com 196 (Bom)]. Also see, *Suman Poddar v. ITO*, (2019) 112 taxmann.com 329 (Del), **SLP dismissed**: *Suman Poddar v. ITO*, (2019) 112 taxmann.com 330 (SC); *Principal CIT v. Swati Bajaj*, (2022) 446 ITR 56 (Cal); *Principal CIT v. Nand Kishore Agarwala*, (2022) 143 taxmann.com 402 (Cal); *Principal CIT v. Smt. Usha Devi Modi*, (2023) 151 taxmann.com 119 (Cal).

Applicability of exemption where transaction of acquisition of an equity share in a company entered into on or after 1-10-2004 but not chargeable to STT.—For the assessment year 2018-19, 3rd proviso to section 10(38) of the 1961 Act has been inserted which mandated that the provisions of exemption shall not apply to any income arising from transfer of an equity share in a company if the following twin conditions are satisfied:—

- (i) Transaction of acquisition (subject to some exceptions) of such equity share is entered into on or after 1-10-2004; and
- (ii) Such transaction is not chargeable to STT under Chapter VII of the Finance (No. 2) Act, 2004.

However, the following are the transactions notified by the Central Government *vide Notification No. SO 1789(E), dated 5-6-2017*¹²: (2017) 394 ITR 24-27 (St.) wherein even if the transaction of acquisition entered into on or after 1-10-2004 is not subject to STT, then also the provisions of section 10(38) of the 1961 Act shall apply:—

Transactions to which exemption provision shall apply [Column 1]	Transactions to which exemption provision shall not apply (i.e., exceptions to Column 1) [Column 2]
Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognized stock exchange of India is made through a preferential issue	Acquisition of listed equity shares in a company which has been approved by the Supreme Court, High Court, NCLT, SEBI or RBI in this behalf
	Acquisition of listed equity shares in a company by any non-resident in accordance with foreign direct investment (FDI) guidelines issued by the Government of India
	Acquisition of listed equity shares in a company by— —an investment fund referred to in <i>Explanation 1(a)</i> to section 115UB; or —a venture capital fund referred to in section 10(23FB); or —a qualified institutional buyer
	Acquisition of listed equity shares in a company through preferential issue to which the provisions of Chapter VII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply
Where transaction for acquisition of existing listed equity share in a company is not entered through a recognized stock exchange of India	Acquisition of listed equity shares in a company through an issue of share by a company (other than through a preferential issue) made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company by scheduled banks, reconstruction or securitization companies or public financial institutions during their ordinary course of business made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)

12. Reference may also be made to *Press Release*, dated 6-6-2017.

Transactions to which exemption provision shall apply [Column 1]	Transactions to which exemption provision shall not apply (i.e., exceptions to Column 1) [Column 2]
	Acquisition of listed equity shares in a company which has been approved by the Supreme Court, High Courts, NCLT, SEBI or RBI in this behalf made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company under employee stock option scheme or employee stock purchase scheme framed under the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company by any non-resident in accordance with foreign direct investment (FDI) guidelines of the Government of India made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company made under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company from the Government made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company by— —an investment fund referred to in <i>Explanation 1(a)</i> to section 115UB; <i>or</i> —a venture capital fund referred to in section 10(23FB); <i>or</i> —a qualified institutional buyer, made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
	Acquisition of listed equity shares in a company by mode of transfer referred to in section 47 or section 50B, if the previous owner of such shares has not acquired them by any mode referred to Column 1 of this Table, made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (if applicable)
Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognized stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognized stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) read with the SEBI Act, 1992 (15 of 1992) and the rules made thereunder	—

For the purposes of above Table, the following definitions are relevant:—

- (a) “Frequently traded shares” **means** shares of a company, in which the traded turnover on a recognized stock exchange during the 12 calendar months preceding the calendar month in which the acquisition and transfer is made, is at least 10% of the total number of shares of such class of the company. *Provided* that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares.
- (b) “Listed” **means** listed in a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder.
- (c) “Preferential issue” and “qualified institutional buyer” shall have the meanings respectively assigned to them in Regulation 2(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (d) “Public financial institution” and “scheduled bank” shall have the meanings respectively assigned to them in *Explanation* to section 36(1)(viii) of the 1961 Act.
- (e) “Recognized stock exchange” shall have the same meaning assigned to it in section 2(f) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).
- (f) “Reconstruction company” and “securitization company” shall have the meanings respectively assigned to them in section 2(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

Non-applicability of section 10(38) of the 1961 Act.—Where transaction of transfer of shares is not done through a recognized stock exchange, assessee would not be entitled to claim exemption as STT cannot be paid on such transaction [*Uday Punj v. CIT*, (2012) 348 ITR 98 (Del)].

In case of *sham* or bogus transaction [see, *CIT v. Mrs. Manish D. Jain (HUF)*, (2020) 122 taxmann.com 180 (Mad); *Vikas Jain v. ITO*, (2023) 146 taxmann.com 210 (Del)].

For the assessment year 2015-16, the provisions were not applicable in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in section 47(xvii) of the 1961 Act.

Reassessment held justified or not, illustrations.—In the following cases, reopening of assessment was held not permissible: *Sandip Bhikhubhai Padsala v. ITO*, (2017) 397 ITR 391 (Guj); *Priti Paras Savla v. ITO*, (2022) 440 ITR 472 (Guj); *Principal CIT v. Badal Prakash Jindal*, (2023) 150 taxmann.com 483 (Ori); *Anwar Mohammed Shaikh v. Asst. CIT*, (2023) 148 taxmann.com 288 (Bom).

Where gain from sale of shares by assessee was exempt from tax in terms of section 10(38) of the 1961 Act, mere non-disclosure of such gain in return of income would not mean that capital gain from sale of shares had escaped assessment [*Swastic Safe Deposit and Investments Ltd. v. Asst. CIT*, (2019) 107 taxmann.com 421 (Bom), **SLP dismissed**: *Asst. CIT v. Swastic Safe Deposit and Investments Ltd.*, (2020) 118 taxmann.com 94 (SC)].

However, in the following cases, reopening of assessment was held justified: *Purviben Snehalbhai Panchhigar v. Asst. CIT*, (2018) 409 ITR 124 (Guj); *Bhanuben Mansukhlal Khimashia v. ITO*, (2021) 128 taxmann.com 229 (Guj); *Vilas Vrajilal Parekh HUF v. ITO*, (2021) 129 taxmann.com 68 (Guj); *Kaushaliya Sampatlal Dudani v. ITO*, (2021) 129 taxmann.com 48 (Guj); *Nishant Vilaskumar Parekh v. ITO*, (2021) 129 taxmann.com 119 (Guj); *Sameer Gulabchand Shah HUF v. ITO*, (2021) 131 taxmann.com 42 (Guj); *Nishant Vilaskumar Parekh v. ITO*, (2022) 440 ITR 436 (Guj); *Krishnakumar J. Desai v. ITO*, (2022) 140 taxmann.com 202 (Mad); *Ajay Gupta (HUF) v. ITO*, (2023) 454 ITR 787 (Del); *Munjal M Jaykrishna Family Trust v. ITO*, (2023) 152 taxmann.com 38 (Guj).

Sunset clause for withdrawal of exemption under section 10(38) of 1961 Act.—As a result of the insertion (w. e. f. 1-4-2019) of 4th proviso in section 10(38) of the 1961 Act by the Finance Act, 2018 (13 of 2018), the exemption provisions of section 10(38) of the 1961 Act enumerated above shall not apply if the transfer of the eligible long-term capital asset is made on or after 1-4-2018.

INCOME ARISING FROM TRANSFER OF SPECIFIED CAPITAL ASSET TO NOTIFIED INDIAN COMPANY [Omitted s. 10(41)]

Introduction under 1961 Act.—*The Taxation Laws (Amendment) Act, 2005.*—By the Taxation Laws (Amendment) Act, 2005 (55 of 2005), section 10(41) was inserted (w. e. f. 1-4-2006).

Exemption in respect of income arising from transfer of specified capital asset to notified Indian company.—Section 10(41) of the 1961 Act, which was inserted (w. e. f. 1-4-2006) by the Taxation Laws (Amendment) Act, 2005 (55 of 2005), grants exemption in respect of any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or

distribution of power where such transfer is effected on or before 31-3-2006, to the Indian company notified under section 80-IA(4)(v)(a) of the 1961 Act.

Omission of section 10(41) of 1961 Act.—*The Finance Act, 2023.*—By the Finance Act, 2023 (8 of 2023), section 10(41) has been omitted (w. e. f. 1-4-2023).

‘13. *Omission of certain redundant provisions of section 10 of the Act.*—13.1. Section 10 of the Act provides for incomes which are not included in total income. Clauses (23BBF), (23EB), (26A), (41) and (49) of this have already been sunset.

13.2. Hence, Finance Act 2023 has omitted clauses (23BBF), (23EB), (26A), (41) and (49) of section 10 of the Act.

Applicability: This amendment has taken effect from 1st April, 2023.’

NOTIFIED ALLOWANCES OR PERQUISITES PAID TO CHAIRMAN OR ANY MEMBER OF UPSC [Omitted s. 10(45)]

Introduction under 1961 Act.—*The Finance Act, 2011.*—By the Finance Act, 2011 (8 of 2011), section 10(45) was inserted (w. r. e. f. 1-4-2008).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 2/2012, dated 22-5-2012*, as follows:—

‘5. *Exemption of certain perquisites of chairman and members of Union Public Service Commission.*—5.1 The existing provisions of the Act provide for the taxation of any perquisites or allowances received by an employee under the head “Salary” unless it is specifically exempt under the Act.

5.2 Section 10 of the Act excludes certain incomes from the ambit of total income. A new section 10(45) has been inserted in the Act to provide specific exemption to the both serving as well as retired Chairmen and Members of the Union Public Service Commission in respect of specified perquisites and allowances, which shall be notified by the Central Government.

5.3 *Applicability.*—This amendment has been made effective retrospectively from 1st April, 2008, and will, accordingly, apply in relation to the assessment year 2008-09 and subsequent years.’

Exemption in respect of notified allowances or perquisites paid to Chairman or any member of UPSC.—Section 10(45) of the 1961 Act, which was inserted (w. r. e. f. 1-4-2008) by the Finance Act, 2011 (8 of 2011) granted exemption in respect of the following allowances or perquisites, as had been notified by the Central Government *vide Notification No. SO 2045(E), dated 6-9-2011*: (2011) 337 ITR (St.) 121, paid to the Chairman and any other member of the Union Public Service Commission (UPSC), for assessment years 2008-09 to 2020-21:—

- (i) the value of rent-free official residence;
- (ii) the value of conveyance facilities including transport allowance;
- (iii) the sumptuary allowance;
- (iv) the value of leave travel concession provided to a serving Chairman or member of the Union Public Service Commission and members of his family.

On the other hand, in case of the retired Chairman and retired members of the UPSC, the following allowances or perquisites had been notified by the Central Government *vide Notification No. SO 2045(E), dated 6-9-2011*: (2011) 337 ITR (St.) 121, for assessment years 2008-09 to 2020-21:—

- (i) a sum of maximum ₹ 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;
- (ii) the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (over and above the number of free calls per months allowed by the telephone authorities).

Omission of section 10(45) of 1961 Act.—*The Finance Act, 2020.*—By the Finance Act, 2020 (12 of 2020), section 10(45) was omitted (w. e. f. 1-4-2021).

For the explanation of the above omission, refer the following portion of the *Memorandum explaining the provisions in the Finance Bill, 2020 (Bill No. 26 of 2020)*:—

‘*Withdrawal of exemption on certain perquisites or allowances provided to Union Public Services Commission (UPSC) Chairman and members and Chief Election Commissioner and Election Commissioners.*—Section 10 of the Act provides for exemption in respect of certain incomes and activities under specific circumstances. Clause (45) thereof, inserted by the Finance Act, 2011, provides that any allowance or perquisite as may be notified by the Central Government, paid to the serving/ retired Chairman or Members of UPSC shall not be included in computing their total income and hence shall be exempt from income-tax.

Further, vide Notification No. 49/2011 dated 6th September, 2011 bearing SO 2045(E), it was notified that in the case of serving Chairman and members of UPSC the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1st April, 2008:

- (i) the value of rent-free official residence;
- (ii) the value of conveyance facilities including transport allowance;
- (iii) the sumptuary allowance;
- (iv) the value of leave travel concession provided to a serving Chairman or member of the UPSC and members of his family.

In the case of retired Chairman and members of UPSC, the said Notification states that the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1st April, 2008:

- (i) a sum of maximum of ₹ 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;
- (ii) the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (overall and above the number of free calls per month allowed by telephone authorities).

Section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 which determines the conditions of service of the Chief Election Commissioner and other Election Commissioners, provides for income-tax exemption to the Chief Election Commissioner and other Election Commissioners on the value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 and the rules made thereunder.

It is proposed to remove these exemptions. Accordingly, it proposed to:

- (i) delete cause (45) of section 10 of the Act;
- (ii) amend section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, so as to delete the exemption from income-tax on value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court, paid to Chief Election Commissioner and other Election Commissioners.

These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. [Clause 7].

INCOME OF NATIONAL FINANCIAL HOLDINGS COMPANY LIMITED [OMITTED S. 10(49)]

Introduction under 1961 Act.—*The Finance Act, 2013.*—By the Finance Act, 2013 (17 of 2013), section 10(49) was inserted (w. e. f. 1-4-2013).

The scope and effect of the above insertion have been elaborated in the following portion of the Departmental Circular No. 3/2014, dated 24-1-2014, as follows:—

‘9. Exemption to National Financial Holdings Company Limited.—**9.1** The Specified Undertaking of Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as the successor of Unit Trust of India (UTI). Exemption from income-tax was available to SUUTI in respect of its income up to 31st March, 2014. SUUTI has been succeeded by a new company wholly owned by the Central Government. It has been incorporated on 7th June, 2012, as National Financial Holdings Company Limited (NFHCL).

9.2 In order to provide the exemption on the lines of SUUTI to NFHCL, clause (49) has been inserted in section 10 of the Income-tax Act, 1961, to grant exemption to NFHCL in respect of income accruing, arising or received on or before 31-3-2014.

9.3 Applicability.—This amendment has been made effective retrospectively from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-14 and assessment year 2014-15.’

Exemption in respect of income of the National Financial Holdings Company Limited.—**Section 10(49)** of the 1961 Act, which was inserted (w. e. f. 1-4-2013) by the Finance Act, 2013 (17 of 2013), exempted any income of the National Financial Holdings Company Limited [i.e., a company set up by the Central Government] of any previous year relevant to assessment year up to 2014-15.

Omission of section 10(49) of 1961 Act.—*The Finance Act, 2023.*—By the **Finance Act, 2023** (8 of 2023), **section 10(49)** has been **omitted (w. e. f. 1-4-2023)**.

'13. Omission of certain redundant provisions of section 10 of the Act.—**13.1.** Section 10 of the Act provides for incomes which are not included in total income. Clauses (23BBF), (23EB), (26A), (41) and (49) of this have already been sunset.

13.2. Hence, Finance Act 2023 has omitted clauses (23BBF), (23EB), (26A), (41) and (49) of section 10 of the Act.

Applicability: This amendment has taken effect from 1st April, 2023.'

LexisNexis

Omitted/Phased out provisions of section 10A of the 1961 Act

¹[S. 10A. Special provision in respect of newly established undertakings in free trade zone, etc.—(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an

1. Subs. by the Finance Act, 2000 (10 of 2000), s. 6 (w. e. f. 1-4-2001), for the following:—

^a[S. 10A. Special provision in respect of newly established industrial undertakings in free trade zones.—(1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

^b[(i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year—

(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park or, as the case may be, software technology park;]

^c[(ia) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1995, its exports of such articles or things are not less than seventy-five per cent. of the total sales thereof during the previous year;]

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

^d[(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any ^e[ten] consecutive assessment years, ^f[* *] beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, ^g[* *]:

^h[* * * *]

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year relevant to any subsequent assessment year,—

(i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(ii) no loss referred to in sub-section (1) of section 72 or ⁱ[sub-section (1) or sub-section (3) of section 74] and no deficiency referred to in sub-section (3) of section 80J, in so far as such loss or deficiency relates to the business of the industrial undertaking, shall be carried forward or set off where such loss, or, as the case may be, deficiency relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I ^j[or section 80-IA] ^k[or section 80-IB] or section 80J in relation to the profits and gains of the industrial undertaking; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) Where an industrial undertaking in any free trade zone has begun to manufacture or produce articles or things in any previous year relevant to the assessment year commencing on or after the 1st day of April, 1977, but before the 1st day of April, 1981, the assessee may, at his option, 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 commencing on the 1st day of April, 1981, furnish to the Income-tax Officer a declaration in writing that the provisions of sub-section (1) may be made applicable to him for each of the relevant assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1981, and if he does so, then, the provisions of sub-section shall apply to him for each of such relevant assessment years and the provisions of sub-section (4) shall also apply in computing the total income of the assessee for the assessment year immediately succeeding the last of the relevant assessment years and any subsequent assessment year.

(6) The provisions of sub-section (8) and sub-section (9) of section 80-I shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-I.

(7) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, ^l[before the due date for furnishing the return of income under sub-section (1) of section 139] ^m[* * * *], furnishes to the "[Assessing Officer]" a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

undertaking from the export of articles or things or computer software for a period ten consecutive assessment year beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000 (10 of 2000), the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

(Footnote No. 1 contd.)

^o[(8) References ^p[in sub-section (5)] 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 ^q[purposes of that sub-section], as if such amendment or omission had not been made.]

Explanation.—For the purposes of this section,—

- (i) “free trade zone” means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;
- ^r[(ii) “relevant assessment years” means the ten consecutive assessment years referred to in sub-section (3);]
- ^s[(iii) “manufacture” includes any—
 - (a) process, or
 - (b) assembling, or
 - (c) recording of programmes on any disc, tape, perforated media or other information storage device;]
- ^t[(iv) “electronic hardware technology park” means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce;
- (v) “software technology park” means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce;
- (vi) “produce”, in relation to articles or things referred to in clause (i) of sub-section (2), includes production of computer programmes.]’.

a. Ins. by the Finance Act, 1981 (16 of 1981), s. 3 (w. e. f. 1-4-1981).

b. Subs. by the Finance Act, 1993 (38 of 1993), s. 4(a) (w. e. f. 1-4-1994), for the following clause (i):—

‘(i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year commencing on or after the 1st day of April, 1981, in any free trade zone;’.

c. Ins. by the Finance Act, 1995 (22 of 1995), s. 5 (w. e. f. 1-4-1996).

d. Subs. by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986), s. 4(a) (w. e. f. 1-4-1987), for the following:—

‘(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things (such assessment year being hereafter in this section referred to as the initial assessment year) and each of the four assessment years immediately succeeding the initial assessment year.’.

e. Subs., for “five”, by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 3(a)(i) (w. e. f. 1-4-1999).

f. The words “falling within a period of eight years” were omitted by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 3(a)(ii) (w. e. f. 1-4-1999).

g. The words “specified by the assessee at his option” were omitted by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 3(a)(ii) (w. e. f. 1-4-1999).

h. The proviso was omitted by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 3(a)(iii) (w. e. f. 1-4-1999). Prior to its omission, the proviso stood as follows:—

‘Provided that nothing in this sub-section shall be construed to extend the aforesaid five assessment years to cover any period after the expiry of the said period of eight years.’.

i. Subs., for “sub-section (1) of section 74”, by the Finance Act, 1987 (11 of 1987), s. 74(c)(ii) (w. e. f. 1-4-1988).

j. Ins. by Act 38 of 1993, s. 4(b) (w. e. f. 1-4-1991).

k. Ins. by the Finance Act, 1999 (27 of 1999), s. 90(a) (w. e. f. 1-4-2000).

l. Subs., for “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”, by the Finance Act, 1988 (26 of 1988), s. 5(a) (w. e. f. 1-4-1989).

m. The words “for the initial assessment year” were omitted by Act 46 of 1986, s. 4(b) (w. e. f. 1-4-1987).

n. Subs., for “Income-tax Officer”, by Act 4 of 1988, s. 2 (w. e. f. 1-4-1988).

o. Sub-section (8) was inserted by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), s. 126(3) (w. e. f. 1-4-1989).

p. Subs., for “in this section”, by Act 26 of 1988, s. 5(b)(i) (w. e. f. 1-4-1989).

q. Subs., for “purposes of this section”, by Act 26 of 1988, s. 5(b)(ii) (w. e. f. 1-4-1989).

r. Subs. by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 3(b) (w. e. f. 1-4-1999), for the following:—

‘[‡](ii) “relevant assessment years” means the five consecutive assessment years specified by the assessee at his option under sub-section (3);’.

[‡]. Subs. by Act 46 of 1986, s. 4(c) (w. e. f. 1-4-1987), for the following:—

‘(ii) “relevant assessment years” means the initial assessment year and four assessment years immediately succeeding the initial assessment year.’.

s. Ins. by Act 11 of 1987, s. 5 (with retrospective effect from 1-4-1981).

t. Ins. by Act 38 of 1993, s. 4(c) (w. e. f. 1-4-1994).

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the ²[undertaking began to manufacture or produce such articles or things or computer software] in such free trade zone or export processing zone:

³[* * * * *]:

⁴[*Provided also* that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:]

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the ⁵[1st day of April, 2012], and subsequent years.

⁶[(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be,—

- (i) hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two consecutive assessment years, and thereafter;
- (ii) for the next three consecutive assessment years, so much of the amount not exceeding fifty per cent of the profits 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 called the “Special Economic Zone Reinvestment Allowance Reserve Account”) to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (1B):

⁷[*Provided* that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139].

(1B) The deduction under clause (ii) of sub-section (1A) shall be allowed only if the following conditions are fulfilled, namely:—

- (a) the amount credited to the Special Economic Zone Reinvestment Allowance Reserve Account is to be utilised—
 - (i) for the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and
 - (ii) until the acquisition of new machinery or plant as aforesaid, for the purposes of the business 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;

2. Subs., for “undertaking was first set up”, by the Finance Act, 2001 (14 of 2001) s. 6(a)(i) (w. r. e. f. 1-4-2001).

3. The third proviso has been omitted by the Finance Act, 2001 (14 of 2001), s. 6(a)(ii) (w. e. f. 1-4-2002), which was as follows:—

“*Provided also* that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.”

4. Ins. by the Finance Act, 2002 (20 of 2002), s. 5(a) (w. e. f. 1-4-2003).

5. Subs., for “1st day of April, 2011”, by the Finance (No. 2) Act, 2009 (33 of 2009), s. 5 (w. r. e. f. 1-4-2009). Earlier, the figures “2011”, substituted, for “2010”, by the Finance Act, 2008 (18 of 2008) s. 5 (w. r. e. f. 1-4-2008).

6. Sub-sections (1A), (1B) and (1C) have been substituted by the Finance Act, 2003 (32 of 2003), s. 7(a) (w. e. f. 1-4-2004), for the following sub-section (1A):—

“(1A) Notwithstanding anything contained in sub-section (1), the deduction in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent of such profits and gains for further two assessment years.”

The above sub-section (1A) was originally inserted by the Finance Act, 2002 (20 of 2002), s. 5(b) (w. e. f. 1-4-2003).

7. Ins. by the Finance Act, 2005 (18 of 2005), s. 5 (w. e. f. 1-4-2006).

- (b) the particulars, as may be prescribed in this behalf, have been furnished by the assessee in respect of new machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(1C) Where any amount credited to the Special Economic Zone Re-investment Allowance Reserve Account under clause (ii) of sub-section (1A),—

- (a) has been utilised for any purpose other than those referred to in sub-section (1B), the amount so utilised; or
(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (1B), the amount not so utilised,

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 three years specified in sub-clause (i) of clause (a) of sub-section (1B),

and shall be charged to tax accordingly.]

(2) This section applies to any undertaking which fulfils all the following conditions, namely:—

- (i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year—
(a) commencing on or after the 1st day of April, 1981, in any free trade zone; or
(b) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park or, as the case may be, software technology park;
(c) commencing on or after the 1st day of April, 2001, in any special economic zone;
(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

⁸[(4) For the purposes of ⁹[sub-sections (1) and (1A)], the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under ¹⁰[this section] shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, ¹¹[* *] the report of an

8. Subs., by the Finance Act, 2001 (14 of 2001), s. 6(b) (w. r. e. f. 1-4-2001), for the following:—

“(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.”

9. Subs., for “sub-section (1)”, by the Finance Act, 2003 (32 of 2003), s. 7(b) (w. r. e. f. 1-4-2003).

10. Subs., for “sub-section (1)”, by the Finance Act, 2003 (32 of 2003), s. 7(c) (w. r. e. f. 1-4-2003).

accountant, as defined in the *Explanation* below sub-section (2) of section 288 ¹²[before the specified date referred to in section 44AB], certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

- (i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years ¹³[ending before the 1st day of April, 2001], in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;
- (ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) ¹⁴of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years ¹⁵[ending before the 1st day of April, 2001];
- (iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and
- (iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

¹⁶[(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger,—

- (a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and
- (b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.]

¹⁷[(7B) The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005), which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006, in any Special Economic Zone.]

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

11. The words “along with the return of income,” have been omitted by the Finance Act, 2020 (12 of 2020), s. 8(i) (w. e. f. 1-4-2020).

12. Ins. by the Finance Act, 2020 (12 of 2020), s. 8(ii) (w. e. f. 1-4-2020).

13. Ins. by the Finance Act, 2003 (32 of 2003), s. 7(d) (w. r. e. f. 1-4-2001).

14. Now section 74(3) has been omitted w. e. f. 1-4-2003 by the Finance Act, 2002 (20 of 2002).

15. Ins. by the Finance Act, 2003 (32 of 2003), s. 7(d) (w. r. e. f. 1-4-2001).

16. Ins. by the Finance Act, 2003 (32 of 2003), s. 7(e) (w. e. f. 1-4-2004).

17. In view of the modification to the Income-tax Act, 1961, made by section 27 read with 2nd Schedule to the Special Economic Zones Act, 2005 (28 of 2005), section 10A(7B) has newly been inserted *vide* item (b) (w. e. f. 10-2-2006).

¹⁸[(9) * * * * *]

¹⁹[(9A) * * * * *]

²⁰[* * * * *]

Explanation. 2—For the purposes of this section,—

(i) “computer software” means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customized electronic data or any product or service of similar nature, as may be notified by the Board,

which is transmitted or exported from India to any place outside India by any means;

(ii) “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of ²¹[the Foreign Exchange Management Act, 1999 (42 of 1999)], and any rules made thereunder or any other corresponding law for the time being in force;

(iii) “electronic hardware technology park” means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) scheme notified by the Government of India in the Ministry of Commerce and Industry;

(iv) “export turnover” means the consideration ²²[in respect of export by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

(v) “free trade zone” means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;

18. Sub-section (9) has been omitted by the Finance Act, 2003 (32 of 2003), s. 7(f) (w. e. f. 1-4-2004). Prior to its omission, sub-section (9) stood as follows:—

“(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.”

19. Sub-section (9A) has been omitted by the Finance Act, 2003 (32 of 2003), s. 7(f) (w. e. f. 1-4-2004). Earlier, sub-section (9A) was inserted by Act 20 of 2002, s. 5(c) (w. e. f. 1-4-2003). Prior to its omission, sub-section (9A) stood as follows:—

“(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place :

Provided that,—

(a) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent. of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent. of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section.”

20. *Explanation 1* has been omitted by the Finance Act, 2003 (32 of 2003), s. 7(g) (w. e. f. 1-4-2004). Prior to its omission, *Explanation 1* as originally enacted, stood as follows:—

“*Explanation 1.*—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking:

Provided that nothing contained in this *Explanation* shall apply to any change in the shareholding of the company as a result of—

(a) its becoming a company in which the public are substantially interested; or

(b) disinvestment of its equity shares by any venture capital company or venture capital fund.”

The above proviso was inserted by the Finance Act, 2001 (14 of 2001), s. 6(c)(i) (w. e. f. 1-4-2001).

21. Subs., for “the Foreign Exchange Regulation Act, 1973 (46 of 1973)”, by the Finance Act, 2013 (17 of 2013), s. 4 (w. r. e. f. 1-4-2013).

22. Subs., for “in respect of export”, by the Finance Act, 2001 (14 of 2001), s. 6(c)(ii) (w. r. e. f. 1-4-2001).

- (vi) “relevant assessment year” means any assessment year falling within a period of ten consecutive assessment years referred to in this section;
- (vii) “software technology park” means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;
- (viii) “special economic zone” means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.]

²³[*Explanation 3.*—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

²⁴[*Explanation 4.*—For the purposes of this section, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.]

Background survey.—Broader economy of the country depends largely on proper industrialisation which also affords aids to combat with unemployment problems. Incentives are, therefore, provided, better in taxation laws, towards that end.

In the year 1949, a limited “tax holiday” in the shape of rebate of tax was provided for in case of new industrial undertakings by enactment of section 15C in the 1922 Act. The benefit was to the extent of a percentage of capital employed. The benefit of “tax holiday” under section 15C was also extended to certain hotels in the year 1961. With the repeal and replacement of the 1922 Act, section 84 of the 1961 Act provided for similar benefits. In the year 1967, the benefit of section 84 was also extended to certain ships and new cold storage plants with retrospective effect from 1-4-1962. For and from assessment year 1968-69, section 84 was replaced by section 80J of the 1961 Act allowing the tax holiday benefit in the shape of straight deduction. The benefit under section 80J of the 1961 Act was specifically made available to new industrial undertakings, etc., which commenced manufacture, etc., prior to 1-4-1981.

For and from assessment year 1966-67, section 80E was inserted in the 1961 Act providing for straight deduction to certain companies in respect of profits and gains from priority industries specified in the then Fifth Schedule to the Act. This was to the extent of 8% of such profits. These provisions of section 80E remained in force till assessment year 1967-68. Thereafter, for and from assessment year 1968-69, these provisions were taken to the former section 80-I. For assessment year 1972-73, the percentage was, however, reduced from 8% to 5%. That section 80-I was deleted with effect from 1-4-1973. Thus, the tax concession available to priority industries was discontinued from assessment year 1973-74.

For and from assessment year 1968-69, a new section 80H was introduced providing for straight deduction to new industrial undertakings employing displaced persons, etc. The benefit was to the extent of 50% of its profits, subject to an overall ceiling limit of ₹ 1,00,000. This section 80H was operative till assessment year 1975-76.

With effect from 1-4-1974, a new section 80HH was inserted providing for straight deduction of an amount equal to 20% of profits and gains derived by a newly established industrial undertaking or hotel business in backward areas. Although this section is still on the statute book, the straight deduction under that section 80HH has been discontinued in relation to an industrial undertaking which begins to manufacture or produce articles or, as the case may be, in relation to the business of a hotel which starts functioning on or after the 1-4-1990. In short, this deduction is not available for and from assessment year 1991-92.

For and from assessment year 1978-79, another new section 80HHA was inserted providing for straight deduction of an amount equal to 20% of profits and gains derived by a newly established small-scale industrial undertaking set up in rural areas. This section also is still on the statute book with the condition that if benefit under section 80HH has been allowed, the benefit under this section 80HHA shall not be available and *vice versa*. But, the straight deduction under that section 80HHA has been discontinued in relation to a newly established small-scale industrial undertaking set up in rural areas which begins to manufacture or produce articles on or after the 1-4-1990. In short, this deduction is also not available for and from assessment year 1991-92.

As stated hereinbefore, the benefit of section 80J was specifically confined to newly established undertakings, etc., which commenced manufacture, etc., prior to 1-4-1981. The Finance (No. 2) Act, 1980 (44 of 1980), did not extend the availability period of section 80J, but, instead, inserted a new section 80-I, with effect from 1-4-1981. Section 80-I is, broadly, on the lines of section 80J with the material change being that the straight deduction is to be calculated equal to a specified percentage of the profits of the eligible undertakings, etc.

23. Ins. by the Finance Act, 2001 (14 of 2001), s. 6(c)(iii) (w. r. e. f. 1-4-2001).

24. Ins. by the Finance Act, 2003 (32 of 2003), s. 7(h) (w. e. f. 1-4-2004).

Introduction under 1961 Act.—*The Finance Act, 1981.*—By the **Finance Act, 1981** (16 of 1981), **section 10A** has been inserted (w. e. f. 1-4-1981).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 308, dated 29-6-1981*:—

‘6. Complete tax holiday for industrial units situated in free trade zones—New section 10A.—6.1 Under the existing provisions, a partial tax holiday is granted to all categories of assessee in respect of profits made by them from an industrial undertaking newly set up in India. Where the industrial undertaking is set up prior to 1-4-1981, the “tax holiday” concession consists of exemption from income-tax up to a specified percentage of the capital employed in the undertaking for five initial assessment years, subject to certain conditions. The percentage specified in this behalf was 7.5 per cent. in the case of a company and 6 per cent. in the case of others. Where an industrial undertaking is set up after 31-3-1981, the assessee who derives profits and gains from the industrial undertaking is entitled to a deduction, in the computation of his taxable income, of 20 per cent. of the profits and gains (25 per cent. in the case of a company) derived from such industrial undertaking for 8 initial assessment years, while in the case of co-operative societies, the tax holiday is granted for a period of 10 initial assessment years.

6.2 The Kandla Free Trade Zone was established by the Government of India in 1965 not only as an export promotion venture but also as a pioneering scheme for industrialisation of the under-developed area of Kutch and also for the development of the Kandla Port as a substitute for Karachi. Similarly, the Santacruz Electronics Export Processing Zone was set up near Bombay to promote rapid growth of the electronics industry as also to encourage setting up of 100 per cent. export-oriented industries in the electronics sector. Under the existing provisions, assessee who derive profits and gains from new industrial undertakings set up in these free trade zones are entitled to the benefit of partial tax holiday, investment allowance, export markets development allowance, additional depreciation allowance, deduction in respect of industrial undertakings set up in backward areas (for industrial undertakings situated in the Kandla Free Trade Zone) and other incentives available in the case of all industrial undertakings. A number of countries have set up free trade zones to attract investment for industrial growth by offering substantial tax concessions including a complete tax holiday for a specified number of years.

6.3 With a view to encouraging the establishment of export-oriented industries in the free trade zone, the Finance Act, 1981 (16 of 1981), has inserted a new section 10A in the Income-tax Act which makes special provision in respect of newly established industrial undertakings in free trade zones. The main features of the new section 10A are explained in the following paragraphs.

6.4 The new section provides for a complete tax exemption in respect of the profits and gains derived from an industrial undertaking set up in any free trade zone for a period of five initial assessment years. For this purpose, the expression “free trade zone” means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section. The tax exemption is granted with reference to the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce any article or thing and each of the four immediately succeeding assessment years. The provisions of this section apply to any industrial undertaking which fulfils the following conditions, namely:—

- (i) The industrial undertaking should begin to manufacture or produce any article or thing during the previous year relevant to the assessment year 1981-82 or any subsequent year in any of the free trade zones. (This is subject to the exception explained in paragraph 6.8).
- (ii) The industrial undertaking should not have been formed by the splitting up or reconstruction of a business already in existence. However, where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section, the same will qualify for the new tax concession.
- (iii) The industrial undertaking should not have been formed by the transfer to a new business of machinery or plant previously used for any purpose.

6.5 For the purpose of (iii) above, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose if the following conditions are fulfilled, namely:—

- (a) such machinery or plant was not previously used in India;
- (b) such machinery or plant is imported into India from a foreign country; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Indian Income-tax Act, 1922 (11 of 1922), or the Income-tax Act, 1961 (43 of 1961).

1961), in computing the total income of any person for any period prior to the installation of the machinery or plant by the assessee.

Further, this tax concession will not be denied in a case where the total value of used machinery or plant transferred to the new business does not exceed 20 per cent. of the total value of the machinery or plant used in that business.

6.6 The scheme of the new section is that the assessee who avails of the benefit of this tax concession will not be eligible for the other tax concessions in relation to the industrial undertakings in the free trade zone either during the course of the 5-year tax holiday period or at any time after the end of the tax holiday period. To secure this objective, sub-section (4) of the new section 10A has made the following provisions in regard to the computation of the total income of the assessee for the previous year relevant to the assessment year immediately succeeding the last assessment year of the tax holiday period or of any previous year relevant to any subsequent assessment year:—

- (i) The provisions relating to depreciation under section 32, investment allowance under section 32A, development rebate under section 33, expenditure on scientific research under section 35 and capital expenditure in relation to family planning under the first proviso to section 36(1)(ix) shall apply as if every allowance or deduction referred to in that section and relating to or allowable for any of the assessment years comprised in tax holiday period in relation to building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking or any expenditure incurred for the purposes of such business in any of such previous years had been given full effect to for that assessment year itself. The natural consequence of this provision is that any amount representing the unabsorbed depreciation under section 32(2), the unabsorbed investment allowance under section 32A(3)(ii), the unabsorbed capital expenditure on scientific research under section 35(4), or the unexpired capital expenditure in relation to the family planning under the first proviso to section 36(1)(ix) in relation to the tax holiday period will not be carried forward or set off against profits for any subsequent assessment year. In other words, it is presumed that the allowances for depreciation, investment allowance, development rebate, capital expenditure on scientific research or for family planning were fully absorbed by the income of the industrial undertaking in any of the previous years relevant to the five initial assessment years and that no amount of unabsorbed allowance or deduction is to be carried forward to any assessment year following the five years tax holiday period.
- (ii) No loss under the head “Profits and gains of business or profession” under section 72(1) or under the head “Capital gains” under section 74(1) and no tax holiday deficiency under section 80J(3) in respect of any of the assessment years comprised in the tax holiday period will, in so far as such loss or deficiency relates to the business of the industrial undertaking, be carried forward or set off in computing the income of the assessment year immediately succeeding the last of the assessment years comprised in the tax holiday period or in any subsequent assessment year.
- (iii) The assessee will not be eligible for deduction under section 80HH (relating to deduction in respect of profits and gains from newly established industrial undertakings in backward areas) or under section 80HHA (relating to deduction in respect of profits and gains from newly established small-scale industrial undertakings in rural areas) or in respect of tax holiday under section 80J or under section 80-I in relation to the profits and gains of the industrial undertaking for any previous year relevant to the assessment year immediately succeeding the last assessment year comprised in the tax holiday period or any subsequent assessment year.
- (iv) In computing the depreciation allowance under section 32, the “written down value” of any asset used for the purposes of the business of the industrial undertaking for the assessment year immediately succeeding the last assessment year comprised in the tax holiday period and every subsequent assessment year will be computed as if the assessee had claimed and had been actually allowed the depreciation allowance for each of the assessment years comprised in the tax holiday period.

6.7 A special provision has been made in sub-section (7) of the new section 10A to give an option to an assessee who derives profits and gains from an industrial undertaking situated in the free trade zone *not* to avail of this tax concession. Such an assessee will be required to furnish a declaration in writing before the expiry of the time allowed under section 139(1) or under section 139(2), whether fixed originally or on extension, to furnish the return of income for the first assessment year for which the tax holiday under the new scheme is available to him, that the provisions of this section may not be made applicable to him and if he does so, the provisions of this section 10A will not apply to him for any of the five assessment years for which the tax holiday provisions would have normally applied to him. The dispensation has been made on the consideration that some assessee may find the general tax concessions available in relation to industries in the rest of India more attractive than the new scheme.

6.8 Sub-section (5) of the new section 10A provides an option to assessee deriving profits and gains from existing industrial undertakings situated in the free trade zone. Accordingly, assessee deriving profits and gains from industrial units set up in any of the previous years relating to the assessment years 1977-78 to 1980-81 will, at their option, be entitled to claim complete tax holiday for the unexpired period of five years. The tax concession in relation to the existing units is being made optional on the consideration that some assessee may find it more profitable to avail of the general tax concessions which are allowed in relation to new industrial undertakings under the existing provisions. Accordingly, an assessee deriving profits and gains from an industrial undertaking set up in any previous year relevant to the assessment years 1977-78 to 1980-81 will be eligible for the benefit of this tax concession for the unexpired period of the five initial assessment years available in his case. Such an option has to be exercised before the expiry of the time allowed for furnishing of the return of income under section 139(1) or 139(2) for the assessment year 1981-82 by furnishing to the Income-tax Officer, a declaration in writing that the provisions of new section 10A may be made applicable to him for each of the assessment years of the unexpired portion of the five-year period and if he does so, the provisions of sub-section (4) of new section 10A will apply in computing his total income for the previous year relevant to the assessment year immediately succeeding the last assessment year of the tax holiday period and subsequent assessment years.

6.9 It may be noted that section 10A will apply in relation to all industrial undertakings set up in the free trade zones during the previous year relevant to the assessment year 1981-82 or any subsequent assessment year *unless the assessee opts out of the scheme by making a declaration under sub-section (7) within the time allowed under that sub-section*. In the case of industrial undertakings set up prior to the previous year relevant to the assessment year 1981-82, however, the provisions of section 10A will apply *only if the assessee makes a declaration under sub-section (5) within the time allowed under these sub-sections*.

6.10 The provisions of sub-section (8) and sub-section (9) of section 80-I will also apply in relation to the industrial undertaking referred to in the new section 10A as they apply in relation to an industrial undertaking referred to under section 80-I. Under the applied sub-section (8) of section 80-I, it is provided that where an assessee has several units, some in the free trade zone and some outside, the profits of the unit in the free trade zone will be computed after taking the cost of the goods transferred to or from the unit on the basis of the market value of such goods. The applied sub-section (9) of section 80-I empowers the Income-tax Officer to determine the reasonable profits that could be attributed to the qualifying undertaking in the free trade zone in cases where, owing to the close connection between the assessee and any other persons or for any other reason, the course of the business is so arranged that the industrial undertaking set up in the free trade zone derives more than ordinary profits which may be expected to arise in that business. This provision has been made with a view to avoiding abuse of the new tax concessions by manipulation of profits between associate concerns or different units of the same concern.

6.11 This amendment has come into force with effect from the 1-4-1981, and is accordingly applicable in relation to the assessment year 1981-82 and subsequent years.

Legislative amendments under 1961 Act.—I. The Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986.—By the **Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986** (46 of 1986), the following **amendments (w. e. f. 1-4-1987)** have been made—

- section 10A(3)** has been **substituted**;
- section 10A(7)** has been **amended**; and
- Explanation (ii) to section 10A** has been **substituted**.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 469, dated 23-9-1986*, as follows:—

‘(ii) Liberalisation of the special provisions in respect of newly established industrial undertakings in free trade zones.—5.1 Section 10A of the Income-tax Act provides for a complete tax exemption in respect of the profits and gains derived from an industrial undertaking set up in any free trade zone for a period of five initial assessment years. The tax exemption is granted with reference to the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce any article or thing and each of the four immediately succeeding assessment years.

5.2 As pointed out by various trade associations, such undertakings in the free trade zones do not always earn profit during all the five initial years. In such cases, they cannot avail of the full tax benefit. In order to get over the problem, the exemption for five assessment years has been permitted to be availed of within a longer time framed as per the Amending Act by providing in sub-section (3) that a taxpayer would be entitled to avail of the exemption, at his option, in respect of any five consecutive assessment years falling within a period of eight years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. The proviso to this new sub-section

stipulates that in no case shall the tax holiday extend beyond this period of eight years. Further, as per the *Explanation* at the end of this section, the expression “relevant assessment years” has been defined to mean the five or less consecutive assessment years, specified by the assessee at his option, within the period of eight years, commencing from the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. Thus, in a case where the assessee exercises his option in the third assessment year relevant to the previous year counted from the year in which the industrial undertaking begins to manufacture or produce articles or things, the exemption can be availed of up to the seventh assessment year. In the case where the option in this behalf is exercised by the assessee in the sixth year, the exemption can be claimed up to the eighth year only.

5.3 The aforesaid provision takes effect from 1-4-1987, and will, accordingly, apply in relation to the assessment year 1987-88 and subsequent years. [*Section 4 of the Amending Act*].

II. The Finance Act, 1987.—By the **Finance Act, 1987** (11 of 1987), the following **amendments** have been made—

—**Explanation (iii) to section 10A** has been **inserted (w. r. e. f. 1-4-1981)**; and

—**section 10A(4)(ii)** has been **amended (w. e. f. 1-4-1988)**.

The scope and effect of the insertion with retrospective effect from 1-4-1981 have been elaborated in the following portion of the *Departmental Circular No. 495, dated 22-9-1987*, as follows:—

‘19. Clarificatory amendment to extend tax holiday to the units in free trade zones.—19.1 Section 10A of the Income-tax Act provides a tax holiday to newly established industrial undertakings in free trade zones. The tax exemption is available for five consecutive assessment years out of the block of initial eight years. The section refers to units engaged in “manufacture or production of articles or things”. There are several cases of units, set up in the free trade zones, which only assemble or process imported components for export, the benefit to the country being the value added. As an incentive for earning foreign exchange, section 10A has been amended with retrospective effect from 1-4-1981, when it was first introduced, to clarify that units that merely assemble or process goods for export would also get the benefit of the tax holiday. The amendment also covers units which carry out recording of programmes on any disc, tape, perforated media or other information storage device. In this regard, the Board had already issued instruction in November, 1986.

19.2 The amendment will come into force retrospectively from 1-4-1981, and will, accordingly, apply in relation to assessment year 1981-82 and subsequent years. [*Section 5 of the Finance Act, 1987*].’

The amendment of section 10A(4)(ii) is consequential to the substitution of a new section 74 in place of the existing section 74.

III. The Direct Tax Laws (Amendment) Act, 1987.—By the **Direct Tax Laws (Amendment) Act, 1987** (4 of 1988), the following **amendments** have been made—

—**section 10A(7)** has been **amended (w. e. f. 1-4-1988)**; and

—**section 10A(8)** has been **inserted (w. e. f. 1-4-1989)**.

For the scope and effect of the amendment made with effect from 1-4-1988, reference may be made to paras. 6 to 6.7 of the *Departmental Circular No. 545, dated 21-9-1989*.

For the scope and effect of the insertion of section 10A(8), reference may be made to paras. 19 to 19.3 of the *Departmental Circular No. 551, dated 23-1-1990*.

IV. The Finance Act, 1988.—By the **Finance Act, 1988** (26 of 1988), the following **amendments (w. e. f. 1-4-1989)** have been made—

—**section 10A(7)** has been **amended**; and

—**section 10A(8)** has been **amended** at two places.

The scope and effect of the above amendments have been elaborated in the following portion of the *Departmental Circular No. 528, dated 16-12-1988*, as follows:—

‘17. Modification of the provisions relating to industrial undertaking in free trade zones.—17.1 Under the existing provisions of section 10A of the Income-tax Act, 1961 (43 of 1961), profits and gains derived by an assessee from a newly established industrial undertaking in free trade zones are not included in his total income subject to certain conditions. The Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), has amended, with effect from 1-4-1989, the provisions of section 139 of the Income-tax Act relating to return of income. By the amendment, the provision regarding issue of notice by the Assessing Officer requiring the assessee to file their returns of income has been omitted. Further, the Assessing Officer will not have any power to extend the dates for filing the return of income. Since references to the provisions of section 139 of the Income-tax Act still continue in sub-sections (5) and (7) of section 10A, they have been suitably amended. Sub-section (8) has been inserted in section 10A of the Income-tax Act to provide that the

amendments in section 139 of the Income-tax Act will not have any effect on the provisions of sub-section (5) of this section.

17.2 These amendments will come into force with effect from 1-4-1989, and will, accordingly, apply to the assessment year 1989-90 and subsequent assessment years. [*Section 5 of the Finance Act, 1988 (26 of 1988)*].

V. The Finance Act, 1993.—By the **Finance Act, 1993** (38 of 1993), the following **amendments** have been made—

- section 10A(2)(i)** has been **substituted (w. e. f. 1-4-1994)**;
- section 10A(4)(iii)** has been **amended (w. r. e. f. 1-4-1991)**; and
- clauses (iv), (v) and (vi) to Explanation to section 10A** have been **inserted (w. e. f. 1-4-1994)**.

The scope and effect of the above amendments, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 657, dated 30-8-1993*, as follows:—

‘Extension of tax holiday under section 10A to Software Technology Parks and Electronic Hardware Technology Parks.—**20.** The provisions of section 10A of the Income-tax Act provides for a five-year tax holiday during the period of the initial eight assessment years for new industrial undertakings set up in free trade zones.

20.1 The Finance Act, 1993 (38 of 1993), has amended section 10A in order to extend the five-year tax holiday to profits and gains derived from units set up in Software Technology Parks and Electronic Hardware Technology Parks approved by the Inter-Ministerial Standing Committee set up under schemes notified by the Ministry of Commerce and administered by the Department of Electronics. The term “produce” in respect of articles or things has been clarified to include production of computer programmes.

20.2 This amendment will take effect from 1-4-1994, and will, accordingly, apply in relation to assessment year 1994-95 and subsequent years. [*Section 4*].

* * *

‘Consequential amendments in sections 10A, 10B and 80P.—**47.** It has been provided in sections 10A and 10B of the Income-tax Act, 1961 (43 of 1961), that a new industrial undertaking established in a free trade zone or a newly established 100 per cent. export-oriented undertaking availing of the benefit under the aforesaid sections would not qualify for deduction, *inter alia*, under section 80-I after the five-year tax holiday period. Similarly, in section 80P it has been provided that a co-operative society availing of deduction under the provisions of section 80P would get deduction on the gross total income as reduced by the deduction, *inter alia*, under section 80-I.

47.1 Section 80-I was superseded by section 80-IA of the Finance (No. 2) Act, 1991 (49 of 1991). Consequently, the Finance Act, 1993 (38 of 1993), has amended sections 10A, 10B with a view to including section 80-IA therein so that any industrial undertaking availing of the benefits of deduction under section 10A or 10B does not avail of deduction under section 80-IA. Likewise, section 80P has been amended with a view to including section 80-IA therein so that a co-operative society availing of deduction under the provisions of section 80P would get deduction on the gross total income as reduced by the deduction, *inter alia*, under section 80-IA.

47.2 The amendments will have retrospective effect from 1-4-1991, the date from which the provision of section 80-IA came into operation. They will accordingly apply in relation to assessment year 1991-92 and subsequent years. [*Sections 4, 5 and 18*].

VI. The Finance Act, 1995.—By the **Finance Act, 1995** (22 of 1995), **section 10A(2)(ia)** has been **inserted (w. e. f. 1-4-1996)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 717, dated 14-8-1995*, as follows:—

‘21. Restricting five-year tax holiday under section 10A to units in FTZs exporting at least 75 per cent. of their turnover.—**21.1** Under section 10A of the Income-tax Act, a five-year tax holiday is allowed to any industrial undertaking in a Free Trade Zone (FTZ) which manufactures or produces any article or thing. This tax holiday is in operation from the assessment year 1981-82. Similarly, the provisions of section 10B exempt the entire profits of 100 per cent. EOUs from the assessment year 1989-90.

21.2 Units in FTZs/100 per cent. EOUs get special treatment by virtue of the fact that they export their entire produce. However, in order to provide economic flexibility to them and to allow them to dispose of the export rejects and by-products, they are allowed under the scheme to sell 25 per cent. of their product in the domestic market. In effect, such units get exemption for five years even in respect of profits from the 25 per cent. domestic sales allowed to them.

21.3 As long as domestic sales are within reasonable limits (up to 25 per cent. of total sales), the exemption of profits in the case of units in FTZs/100 per cent. EOUs can be justified as a concession incidental to export. Recently, however, it has come to notice that several units approved as 100 per cent. EOUs/FTZs are allowed to sell more than 25 per cent. of their produce in the domestic market.

21.4 In view of this undue benefit, last year, in the case of 100 per cent. EOUs exemption under section 10B was restricted only to units exporting at least 75 per cent. of their turnover. It has now been provided that, in the case of units in FTZ also, exemption under section 10A be restricted to units exporting at least 75 per cent. of their turnover. Units which export less than 75 per cent. of their turnover can avail themselves of the normal 100 per cent. deduction under section 80HHC to the extent of the export profits. The restriction will apply to new units which begin to manufacture or produce an article or thing on or after 1-4-1995.

21.5 This amendment will take effect from 1-4-1996, and will, accordingly, apply in relation to the assessment year 1996-97 and subsequent years. [Section 5].

VII. The Income-tax (Second Amendment) Act, 1998.—By the **Income-tax (Second Amendment) Act, 1998** (11 of 1999), the following **amendments (w. e. f. 1-4-1999)** have been made—

—**section 10A(3)** has been **amended**;

—**proviso to section 10A(3)** has been **omitted**; and

—**Explanation (ii) below section 10A(8)** has been **substituted**.

VIII. The Finance Act, 1999.—By the **Finance Act, 1999** (27 of 1999), **section 10A(4)(iii)** has been **amended (w. e. f. 1-4-2000)**.

IX. The Finance Act, 2000.—By the **Finance Act, 2000** (10 of 2000), **section 10A** has been **substituted (w. e. f. 1-4-2001)**.

The scope and effect of the above substitution, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 794, dated 9-8-2000*, as follows:—

***15. New provisions substituted for existing sections 10A and 10B.**—(Special provision in respect of newly established undertakings in specified Free Trade Zones, Electronic Hardware Technology Parks, Software Technology Parks or any Special Economic Zones or in respect of Export Oriented Units, etc.).

15.1 Under the existing provisions, new undertakings set up in notified Free Trade Zones and Export Processing Zones are entitled to a ten-year tax holiday under section 10A of the Income-tax Act. Similarly, section 10B of the Income-tax Act allows a ten-year tax holiday to export oriented undertakings (EOUs), which manufacture or produce any article or thing. The provisions of section 10B was introduced by the Finance Act, 1988 (26 of 1988). The Finance Act, 1993 (38 of 1993), extended the tax holiday under section 10A to industrial units in approved Electronic Hardware Technology Parks (EHTP) or Software Technology Parks (STP).

15.2 With a view to rationalize the concessions and to phase these out by the end of the assessment year 2009-2010, the provisions of section 10A and section 10B have been substituted by new provisions. The main features of the new sections are explained in the following paragraphs—

15.3 The new provisions provide for deduction in respect of profits and gains derived by an undertaking from export of articles or things or computer software. This deduction is available for a period of ten consecutive assessment years in a graded manner. The deduction would be granted with reference to the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software. Thus, an undertaking set up on or before 31-3-2000, shall be entitled to the deduction for a period of ten years, that set up during the period 1-4-2000, to 31-3-2001, for a period of nine years, that set up in 2001-2002 for a period of eight years and so on. The existing units will get the deduction for the expired²⁵ period of ten years only. In case an Export Promotion Zone (EPZ) is converted into a Special Economic Zone, the period of ten consecutive years shall include the period during which such unit was located in the Export Promotion Zone.

15.4 The conditions for the applicability of these provisions are that the undertaking:

- (a) begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after 1-4-1981, in any free trade zone or commencing on or after the 1-4-1994, in any electronic hardware park or software technology park. The benefit has also been extended to new undertakings set up in any previous year relevant to an assessment year beginning on or after the 1-4-2001, in a Special Economic Zone;
- (b) should not be formed by the splitting or reconstruction of a business already in existence except under circumstances referred to in section 33B;

25. Ought to have been 'unexpired'.

- (c) should not be formed by the transfer to a new business of machinery or plant previously used for any purpose.

15.5 The new provisions further put a condition that in order to avail of the deduction, the sale proceeds of articles or things or computer software exported out of India should be received in or brought into India within a period of six months from the end of the previous year or within such further period as the competent authority may allow. If sale proceeds are credited to a separate account maintained for the purpose with any bank outside India, with the approval of the Reserve Bank of India, the sale proceeds shall be deemed to have been received in India.

15.6 For the computation of profits derived from the export of articles or things or computer software, sub-section (4) provides that the profits derived from such exports shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of business. The profits of the business in the given context would mean the profits of the business carried on by the undertaking to which the provisions apply. The working formula for arriving at the export profits will be as follows:

$$\text{Export profits} = \text{Profits of the undertaking} \times \frac{\text{Export turnover}}{\text{Total turnover}}$$

The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100 per cent. export oriented undertaking as the case may be and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision.

15.7 Proviso to sub-section (1) further provides that profits on domestic sales to the extent of 25 per cent. of total sales shall be deemed to be the profits and gains derived from export of articles or things or computer software. The profits on such domestic sales shall be separately worked out proportionately and further added to the amount of export profits for the purposes of deduction under these provisions.

15.8 Sub-section (5) of the new provision provides that the assessee must furnish in the prescribed form a report by an accountant with effect from assessment year 2001-2002 certifying that the deduction has been correctly claimed in accordance with the provisions of the section.

15.9 Sub-section (9) provides that in case there is a transfer of ownership or the beneficial interest in the undertaking by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year in which the transfer takes place and in the subsequent years. *Explanation 1* further provides that in the case of a company where on the last date of any previous year the shares of the company carrying not less than 51 per cent. of the voting power are not beneficially held by persons who held the shares of the company carrying not less than 51 per cent. of the voting power on the last day of the year in which the undertaking was set up, the company shall be deemed to have transferred its ownership or the beneficial interest in the undertaking.

15.10 The scheme of the substituted section retains parts of the earlier provisions. Where an assessee avails of benefit of section 10A (or section 10B), it will not be eligible for other tax concessions available under other provisions of the Act, during the period of ten years, or at any time after the expiry of this period. For this purpose, sub-section (6) provides that the provisions for depreciation under section 32, investment allowance under section 32A, development rebate under section 33, expenditure on scientific research under section 35 and capital expenditure in relation to family planning under section 36(1)(ix) shall apply as if all allowances or deduction specified therein have been given full effect to. Consequently, the respective unabsorbed amounts cannot be carried forward or set off against profits of any subsequent year. In other words, it is presumed that the allowances for depreciation, investment allowance, development rebate, capital expenditure on scientific research or family planning were fully absorbed in these ten years and that no amount of unabsorbed allowance or deduction is to be carried forward following the ten years period. Similarly, no loss under the head "Profits and gains of business or profession" under section 72(1) or under the head "Capital gains" under section 74(1) in respect of the relevant assessment years, will be carried forward or set off in computing the income of the undertaking after the period of benefit.

15.11 The newly inserted provision in sub-section (7) also refers to sub-sections (8) and (10) of section 80-IA of the Income-tax Act, to enable the Assessing Officer to make adjustment to certain transactions entered into by the eligible business, and in respect of transactions which are not at arm's length between closely connected parties.

15.12 By retaining sub-section (8), the assessee is given an option of not being regulated under the provisions of this section.

15.13 In the *Explanation* below the newly inserted provision, the meaning of "computer software" is enlarged to include customized electronic data or such other services as may be notified by the Board.

15.14 The provisions of newly substituted section 10B shall apply *mutatis mutandis* in respect of hundred per cent. export oriented units.

15.15 The proviso to sub-section (1) provides that no deduction under these sections would be available for and after the assessment year 2010-11.

15.16 The newly substituted sections will be applicable with effect from 1-4-2001, and will apply to the assessment year 2001-2002 and subsequent years. [Sections 6 and 7].

X. The Finance Act, 2001.—By the **Finance Act, 2001** (14 of 2001), the following **amendments** have been made—

- 2nd proviso to section 10A(1)** has been amended (w. e. f. 1-4-2001);
- 3rd proviso to section 10A(1)** has been omitted (w. e. f. 1-4-2002);
- section 10A(4)** has been substituted (w. e. f. 1-4-2001);
- proviso to Explanation 1 to section 10A** has been inserted (w. e. f. 1-4-2001);
- Explanation 2(iv) to section 10A** has been amended (w. e. f. 1-4-2001); and
- Explanation 3 to section 10A** has been inserted (w. e. f. 1-4-2001).

The scope and effect of the above amendments, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 14 of 2001, dated 9-11-2001*, as follows:—

21. Rationalization of provisions related to undertakings in Free Trade Zones, Export Processing Zones, Special Economic Zones and Export Oriented Units.—**21.1** Under section 10A of the Income-tax Act, newly established undertakings in free trade zones are entitled to a tax holiday for a ten year period. Similarly, section 10B of the Income-tax Act provides for a ten year tax holiday in respect of newly established hundred per cent. export oriented undertakings. The Finance Act, 2000 (10 of 2000), substituted sections 10A and 10B of the Income-tax Act. The newly substituted provisions of sections 10A and 10B provide for deduction of profits and gains of business derived by an undertaking from export of products or articles or things or computer software for a period of ten consecutive assessment years in a manner that the deductions are gradually phased out over the subsequent period. The definition of “export turnover” has been amended to clarify that the working of the proportionate deduction on export profits are meant to be of the undertaking, and not of the business, as a whole.

21.2 The Finance Act, 2001 (14 of 2001), clarifies that in the event of conversion of a free trade zone into Special Economic Zone the period of ten years shall be reckoned from the date the unit first began to manufacture or produce articles or things or computer software. The Finance Act, 2001 (14 of 2001), also omits the proviso to sub-section (1), under which upto 25% of production sold in domestic tariff area was also treated as eligible for deduction. The effect of this amendment would be that the profits derived from domestic sales of articles or things or computer software would be liable to tax. The (proposed) amendment will take effect from assessment year 2002-03.

21.3 Sub-section (9) provides that where during any previous year, the ownership or beneficial ownership interest in the undertaking is transferred, the benefit of the deduction would not be allowed for that year and subsequent years. An *Explanation* applicable in cases of companies further provides that where 51% of shares are not beneficially held by persons, who held these shares at the time of setting up of the unit, it will be deemed to be a transfer of ownership.

21.4 Owing to difficulties in monitoring change in shareholding pattern in listed companies in which the public are substantially interested, the amendment provides that the provisions of sub-section (9) would not be applicable in the case of a company where its shareholding undergoes any change as a result of its becoming a company in which public are substantially interested. The proviso would also not be applicable to a company in which public are substantially interested at the time of setting up of the undertaking. In other words, the proviso will not apply to companies in which public are substantially interested either at the time of setting up or later on its becoming a company in which public are substantially interested. The proviso also applies to any change in the shareholding pattern of any venture capital company or a venture capital funds, which have to necessarily disinvest at some stage.

21.5 A circular No. 694, dated 23-11-1994 was issued by the CBDT stating that the benefit of concession under section 10A/10B would be available for the profits derived from on site development of computer programme.

21.6 In view of intellectual input required for writing client specific software, a new *Explanation 3* in the provision has been inserted to clarify that export of computer software shall include receipts from development of software at the client’s site abroad. Such earnings would also be eligible for the benefit under

the provision. For earlier years, the circular of CBDT referred to above shall continue to apply in respect of profits derived from on-site development of computer programme.

21.7 These amendments being clarificatory, will take effect from 1-4-2001, and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent years. [Sections 10A, 10B].

XI. The Finance Act, 2002.—By the Finance Act, 2002 (20 of 2002), the following amendments (w. e. f. 1-4-2003) have been made—

- 4th proviso to section 10A(1)** has been inserted;
- section 10A(1A)** has been inserted; and
- section 10A(9A)** has been inserted before *Explanation 1* to section 10A.

The scope and effect of the above amendments, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*, as follows:—

‘19. Amendment in the provisions relating to deduction under section 10A to units in Free trade zones, Special Economic Zones, etc., and under section 10B to 100% export oriented units.—19.1 Under the existing provisions of section 10A, a deduction is given of 100% of profits and gains from export earnings of new undertakings established in free trade zones, software technology parks, electronic hardware technology parks or Special Economic Zones (SEZs), which are engaged in manufacture or production of articles or things or computer software.

19.2 Section 10B provides for a similar deduction in respect of export earnings of 100% Export Oriented Units engaged in manufacture or production of articles or things or computer software.

19.3 Such deduction is available for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be. For computing the deduction, the profits derived from export of articles or things or computer software are worked out by taking the amount, which bears to the net profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

19.4 In view of the need for resource mobilization in the short run, the Finance Act, 2002 (20 of 2002), seeks to restrict the 100% deduction under section 10A and 10B, for one assessment year, *i.e.* 2003-2004 to 90% of such profits and gains as are derived by an undertaking from the export of articles or things or computer software.

19.5 Under the existing provisions of section 10A, the deduction is available for a maximum period of ten consecutive assessment years starting from the year of commencement of production. After the assessment year commencing on or after 1-4-2010, no deduction shall be available irrespective of the year of commencement of production. However, in respect of undertakings commencing operation in the notified Special Economic Zones (SEZs) on or after 1-4-2002, the Finance Act, 2002 (20 of 2002), intends to provide a separate tax holiday for a total period of seven assessment years, comprising of a deduction of 100% of export profits for five years followed by deduction of 50% of export profits for subsequent two years. The proposal shall have the effect of extending the deduction under section 10A beyond the assessment year 2010-11, in respect of undertakings operating from the notified Special Economic Zones (SEZs).

19.6 Sub-section (9) of section 10A and sub-section (9) of section 10B provide that no deduction under those sections shall be available where during any previous year the ownership or the beneficial interest in the undertaking is transferred by any means.

19.7 The above provision was introduced by the Finance Act, 2000 (20 of 2002), to prevent trading in incentives by shell companies formed only for that purpose. However, the above provision was not intended to bring within its purview cases of genuine business reorganization while maintaining the major portion of ownership or beneficial interest with the same persons who were the owners of the business before such reorganization.

19.8 Exceptions were made by the Finance Act, 2001 (14 of 2001), in the case of private limited companies becoming companies in which public are substantially interested as also disinvestment of equity shares by venture capital companies or funds. It was also clarified that cases of change in shareholding pattern in the case of public limited companies will also not affect the deduction.

19.9 The Finance Act, 2002 (20 of 2002), has introduced sub-section (9A) to provide that in case of genuine reorganization of business whereby a proprietary concern or a partnership is succeeded by a company, the prohibition of sub-section (9) will not apply if the beneficial ownership of not less than 51% continues to be held by the original promoters. Since, undertakings can be owned by body corporate also, it is clarified that this will hold good even if the proprietor happens to be a body corporate.

19.10 This is however, subject to the condition that, the aggregate of the shareholding in the company of the partners of the firm, or of the sole proprietor in case of a proprietorship concern, is not less than fifty-one per cent. of the total voting power in the company and their shareholding continues to be as such for the period for which the deduction under this section is being claimed by the company in respect of the undertaking.

19.11 The amendment is proposed to be effective from 1-4-2003, and shall be effective from assessment year 2003-04 and subsequent years. [Sections 5 and 6].

XII. The Finance Act, 2003.—By the Finance Act, 2003 (32 of 2003), the following amendments have been made—

- sections 10A(1A), (1B) & (1C) have been substituted (w. e. f. 1-4-2004) for the then existing section 10A(1A);
- section 10A(4) has been amended (w. e. f. 1-4-2003);
- section 10A(5) has been amended (w. e. f. 1-4-2003);
- sections 10A(6)(i) & (ii) have been amended (w. r. e. f. 1-4-2001);
- section 10A(7A) has been inserted (w. e. f. 1-4-2004);
- sections 10A(9) & (9A) have been omitted (w. e. f. 1-4-2004);
- Explanation 1 to section 10A has been omitted (w. e. f. 1-4-2004); and
- Explanation 4 to section 10A has been inserted (w. e. f. 1-4-2004).

The scope and effect of the above amendments, *inter alia*, have been elaborated in the following portion of the Departmental Circular No. 7 of 2003, dated 5-9-2003, as follows:—

‘18. Reinvestment allowance for units in Special Economic Zones.—18.1 Under the existing provision contained in section 10A, a deduction is allowed on the export profits of an undertaking set up in a Free Trade Zone, Software Technology Park, Electronic Hardware Technology Park or a Special Economic Zone, which is engaged in the manufacture or production of articles or things or computer software. The deduction is available to an undertaking for a period of ten consecutive assessment years. No deduction is allowable to any undertaking beyond the assessment year 2009-10. However, for a unit set up in Special Economic Zone, the deduction is equivalent to one hundred per cent. of export profits for five years and thereafter, fifty per cent. of profits for next two years and is available even beyond the assessment year 2009-10.

18.2 With a view to promoting the development of Special Economic Zones, the existing sub-section (1A) of section 10A has been substituted so as to provide for a further deduction for three consecutive years beyond the existing period eligible for deduction, which shall be equal to 50% of the profits, as are credited to a reserve account to be utilized for the purposes of the business. A new sub-section (1B) has also been inserted to provide that the reserve account is to be utilized for the acquiring a new machinery or plant which is put to use before the expiry of a period of three years. It has also been provided that until the acquisition of a new machinery or plant, the said reserve may be utilized for the purposes of the business 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.

18.3 These amendments will take effect from 1-4-2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years.

18.4 Further, the reference of sub-section (1A) in sub-section (4) and the reference of “this section” instead of “sub-section (1) in sub-section (5) of section 10A have also been inserted. The amendments are consequential in nature and will take effect retrospectively from 1-4-2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years. [Sections 7(a), 7(b) and 7(c)]

19. Extending the benefit of deduction under section 10A and 10B to the business of cutting and polishing of precious and semi-precious stones.—19.1 With the view to give fiscal support to the export of precious and semi-precious stones, the benefit of deduction under sections 10A and 10B have been extended to the business of cutting and polishing of precious and semi-precious stones. Accordingly, a new Explanation 4 has been inserted in both the sections so as to provide that for purposes of this section, the expression, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.

19.2 These amendments will take effect from 1-4-2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [Sections 7(h) and 8(e)]

20. Providing for carry forward of business losses and unabsorbed depreciation to units in Special Economic Zones and 100% Export Oriented Units.—20.1 Under the existing provisions of sections 10A and 10B, the undertakings operating in a Special Economic Zone (under section 10A) and 100% Export Oriented Units (EOU’s) (under section 10B) are not permitted to carry forward their business losses and unabsorbed depreciation.

20.2 With a view to rationalize the existing tax incentives in respect of such units sub-section (6) in sections 10A and 10B has been amended to do away with the restrictions on the carry forward of business losses and unabsorbed depreciation.

20.3 The amendments have been brought into effect retrospectively from 1-4-2001 and have been made applicable to business losses or unabsorbed depreciation arising in the assessment year 2001-02 and subsequent years. [Sections 7(d) and 8(a)]

21. Allowing deduction under sections 10A and 10B to the resulting entity in the case of amalgamation or demerger.—21.1 The deduction under sections 10A and 10B, are not allowed to the assessee where the ownership or the beneficial interest in the undertaking is transferred by any means, due to the provisions of sub-section (9) of section 10A and sub-section (9) of section 10B. However, this condition is not applicable in certain cases, such as where a firm or sole proprietary concern is succeeded by a company as a result of the reorganisation of the business, or where as a result of change in ownership, the resultant entity is a public limited company or a venture capital company.

21.2 With a view to give a boost to the export-led growth, and to eliminate the hurdles in the mergers and acquisitions (M&A) and other modes of business restructuring, a new sub-section (7A) in section 10A and a new sub-section (7A) in section 10B have been inserted to provide that where an undertaking of an Indian company is transferred to another company under a scheme of amalgamation or demerger, the deduction shall be allowable in the hands of the amalgamated or the resulting company. However, no deduction shall be admissible under this section to the amalgamating company or the demerged company for the previous year in which amalgamation or demerger takes place. As a consequence, sub-sections (9), (9A) and the *Explanation* below thereto in sections 10A and 10B, become redundant and have been omitted.

21.3 The amendments will take effect from 1-4-2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [Sections 7(e), 7(f), 7(g), 8(b), 8(c) and 8(d)]'.

XIII. The Finance Act, 2005.—By the Finance Act, 2005 (18 of 2005), proviso to section 10A(1A) has been inserted (w. e. f. 1-4-2006).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 3 of 2006, dated 27-2-2006*, as follows:—

'Filing of return mandatory for units in Special Economic Zones.—3.4 Under the existing provisions of sub-section (1A) of section 10A, an undertaking set up in a Special Economic Zone, which begins to manufacture or produce articles or things or computer software after 31-3-2002, is allowed a hundred per cent. deduction of export profits for a period of five years followed by fifty per cent. deduction of such profits for the next two years, and thereafter a fifty per cent. deduction of export profits credited to a special reserve account, for the next three years.

In order to ensure timely submission of returns claiming deduction under section 10A, a proviso has been inserted to provide that no deduction shall be allowed with regard to profits of an undertaking set up in any Special Economic Zone and claiming deduction under sub-section (1A) of section 10A if the return of income is not furnished by the due date specified under sub-section (1) of section 139 of the Income-tax Act.

Applicability: From the assessment year 2006-07 onwards. [Section 5]'

XIV. The Special Economic Zones Act, 2005.—By the Special Economic Zones Act, 2005 (28 of 2005), section 10A(7B) has been inserted (w. e. f. 10-2-2006).

XV. The Finance Act, 2008.—By the Finance Act, 2008 (18 of 2008), 4th proviso to section 10A(1) has been amended (w. e. f. 1-4-2008).

The scope and effect of the above amendment, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 1/2009, dated 27-3-2009*, as follows:—

'9. Extension of time limit for availing deduction under sections 10A and 10B.—9.1 100 per cent deduction on exports profits is allowed to an undertaking, if—

- (i) the undertaking is set up in a free trade zone, Software Technology Park, Electronic Hardware Technology Park or a special economic zone and is engaged in the manufacture or production of articles or things or computer software; (section 10A)
- (ii) the undertaking is declared as a hundred per cent export oriented undertaking engaged in the manufacture or production of articles or things or computer software. (section 10B)

9.2 The deduction is available for a period of ten consecutive assessment years beginning with the initial assessment year in which the undertaking begins to manufacture or produce the article or things or computer software. However, no deduction was allowable, under these sections, to any undertaking beyond the assessment year 2009-10.

9.3 Section 10A and section 10B have now been amended to extend the sun-set date under these sections to the assessment year 2010-11. Hence, no deduction will, therefore, be available under these sections beyond the assessment year 2010-11.

9.4 Applicability: These amendments have been made applicable with effect from 1-4-2008 and shall accordingly apply for the assessment year 2008-09 and subsequent assessment years.’

XVI. The Finance (No. 2) Act, 2009.—By the **Finance (No. 2) Act, 2009** (33 of 2009), **4th proviso to section 10A(1)** has been **amended (w. r. e. f. 1-4-2009)**.

The scope and effect of the above amendment, *inter alia*, have been elaborated in the following portion of the *Departmental Circular No. 5/2010, dated 3-6-2010*, as follows:—

‘11. Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B.—**11.1** Under the existing provisions, the deductions under section 10A and section 10B of the Income-tax Act were available only up to the assessment year 2010-11.

11.2 Sections 10A and 10B have been amended to extend the tax benefit under both these sections by one year, *i.e.*, the deduction will be available up to assessment year 2011-12.

11.3 Applicability.—These amendments have been made applicable with effect from 1-4-2009 and will accordingly apply for assessment year 2009-10 and subsequent assessment years.’

XVII. The Finance Act, 2013.—By the **Finance Act, 2013** (17 of 2013), **section 10A** has been **amended (w. e. f. 1-4-2013)**.

For the scope and effect of the above amendment, reference may be made to paras. 33 to 33.4 of the *Departmental Circular No. 3 of 2014, dated 24-1-2014*.

XVIII. The Finance Act, 2020.—By the **Finance Act, 2020** (12 of 2020), **section 10A(5)** has been **amended (w. e. f. 1-4-2020)** at two places.

For the explanation of the above amendment, refer the portion of the *Memorandum explaining the provisions in the Finance Bill, 2020 (Bill No. 26 of 2020)*.

PROVISION OPERATIVE BETWEEN 1-4-1981 AND 31-3-2001

Setting up of free trade zones (FTZs), etc.—It was felt that a number of countries have set up free trade zones to attract investment for industrial growth by offering substantial tax concessions including a complete tax holiday for a specified number of years.

In order to provide for complete tax exemption in respect of the profits and gains derived from new industrial undertakings set up in any such free trade zone, the **Finance Act, 1981** (16 of 1981), has **inserted** a new **section 10A of the 1961 Act**, with effect from 1-4-1981, *i.e.*, **for and from assessment year 1981-82**. In other words, the profits and gains derived by an eligible industrial undertaking are to be excluded in their entirety and shall not be included in the total income of the taxpayer for the eligible period.

With a view to encouraging establishment of export-oriented industries, which could on the question of price compete with other foreign countries, the Central Government has, for the time being, set up two “free trade zones”, namely:—

- (1) Kandla Free Trade Zone; and
- (2) Santa Cruz Electronics Export Processing Zone.

In addition, the Central Government is empowered to set up and specify any other free trade zone(s). In this regard, the Central Government has specified the following free trade zones for the purpose of section 10A of the 1961 Act for the assessment years commencing on or after the 1-4-1988 *vide Notification No. SO 3231, dated 29-9-1987*:—

- (i) Falta Export Processing Zone in West Bengal;
- (ii) Madras Export Processing Zone in Tamil Nadu;
- (iii) Cochin Export Processing Zone in Kerala;
- (iv) Noida Export Processing Zone at Noida in Uttar Pradesh.

With effect from 1-4-1994, the benefit of section 10A of the 1961 Act is also available to an industrial undertaking which has begun or begins to manufacture or produce articles or things during the previous year relevant to assessment year 1994-95, or any subsequent assessment year, in any electronic hardware technology park or, as the case may be, software technology park.

It may be noted that the tax concession of section 10A of the 1961 Act is available to all taxpayers including foreign companies and non-resident non-corporate taxpayers.

“Electronic hardware technology park”, defined.—The expression ‘electronic hardware technology park’ has been defined in **clause (iv) of the Explanation to section 10A of the 1961 Act** so as to mean any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce.

In regard to the above, in exercise of the powers conferred by section 3(1) of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government has notified the amended Electronic Hardware Technology Park (EHTP) Scheme [Notification No. SO 387(E), dated 30-4-1995].

“Software technology park”, defined.—The expression “software technology park” has been defined in **clause (v) of the Explanation to section 10A of the 1961 Act** so as to mean any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce.

In regard to the above, in exercise of the powers conferred by section 3(1) of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government has notified the following Schemes:—

- (1) Software Technology Parks (STP) Scheme [Notification No. SO 243(E), dated 22-3-1994: (1994) 209 ITR (St.) 48-50; and
- (2) Amended Software Technology Parks (STP) Scheme [Notification No. SO 388(E), dated 30-4-1995].

Eligibility criteria for eligible industrial undertakings.—The benefit of section 10A of the 1961 Act is available to an industrial undertaking which fulfils all the following conditions laid down in **section 10A(2) of the 1961 Act**, namely:—

- (i) it has begun or begins to manufacture or produce articles or things during the previous year relevant to assessment year—
 - 1981-82 or any subsequent assessment year, in any free trade zone [also refer, section 10A(5) of the 1961 Act];
 - 1994-95 or any subsequent assessment year, in any electronic hardware technology park or, as the case may be, software technology park.

Section 10A(5) of the 1961 Act has, however, given an option also to a new industrial undertaking set up in a free trade zone during any of the previous years relevant to assessment years 1977-78 to 1980-81, if it fulfils all the other above conditions, to claim benefit under section 10A of the 1961 Act. Such option can be exercised by furnishing a declaration in writing to the Income-tax Officer before the expiry of the time allowed under section 139(1) or section 139(2) of the 1961 Act, whether fixed originally or on extension, for furnishing the return of income for the assessment year 1981-82 stating that the provisions of section 10A(1) of the 1961 Act may be made applicable for the unexpired period of five years.

With regard to the above section 10A(5), **section 10A(8) of the 1961 Act** (operative from 1-4-1989) clarifies that the references in section 10A(5) of the 1961 Act to any other provisions of the 1961 Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall, notwithstanding such amendment or omission, be construed, for the purposes of section 10A(5) of the 1961 Act, as if such amendment or omission had not been made.

- (ii) **(w. e. f. 1-4-1996)** in relation to an undertaking which begins to manufacture or produce any article or thing on or after 1-4-1995, its exports of such articles or things are not less than 75% of the total sales thereof during the previous year.
- (iii) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act.
- (iv) it is not formed by the transfer to the new business of machinery or plant previously used for any purpose subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the *Explanation 1* to section 80-I(2) of the 1961 Act, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business.

“Manufacture”, defined.—The expression “manufacture”, as defined in **clause (iii) of the Explanation to section 10A of the 1961 Act**, includes, for the purposes of section 10A of the 1961 Act, any—

- process, or
- assembling, or
- recording of programmes on any disc, tape, perforated media or other information storage device.

“Produce”, defined.—**Clause (vi) inserted (w. e. f. 1-4-1994) by the Finance Act, 1993 (38 of 1993)] of the Explanation to section 10A of the 1961 Act** defines the expression “produce”, in relation to articles or things referred to in section 10A(2)(i) of the 1961 Act, so as to include production of computer programmes.

Units producing computer software in EPZs, STPs or 100% EOUs, clarifications.—The following Circular No. 694, dated 23-11-1994 is on the point:—

‘Tax holiday under sections 10A and 10B of 1961 Act for units producing computer software in Export Processing Zones (EPZs), Software Technology Parks (STPs) or 100% Export Oriented Units (EOUs)—Certain clarification thereon.—Section 10A of the Income-tax Act provides for a five-year total tax holiday to industrial undertakings which manufacture or produce any article or thing and are set up in notified Free Trade Zones (FTZs). This provision was introduced by the Finance Act, 1981.

2. Similarly, section 10B of the Income-tax Act allows a five-year tax holiday to approved 100% export oriented undertakings (EOUs), which manufacture or produce any article or thing. This provision was introduced by the Finance Act, 1988.

3. Finance Act, 1993, extended the tax holiday under section 10A to industrial units in approved Electronic Hardware Technology Parks (EHTP) or Software Technology Parks (STP). This provision is applicable to undertakings that begin production in a previous year relevant to the assessment year 1994-95 or after. By the same Finance Act, an *Explanation* of the term “produce” was inserted to state that “produce” includes production of computer programmes.

4. Certain issues arising from the abovementioned provisions are causing disputes between the Income-tax Department and the software export sector and, therefore, need to be clarified.

Development of programmes on site

5. Since computer programmes are not physical goods but are developed as a result of an intellectual analysis of the systems and methods followed by the purchaser of the programme, it is often prepared on site, with the software personnel going to the client’s premises. Doubts have been raised whether units taking up such production of software at the client’s premises would be eligible for the tax holiday.

6. The Government’s policy on tax incentive to software exports is reflected in the provisions of section 80HHE introduced in 1991. Under this provision, technical services provided outside India, for the development or production of computer software, are included for the purpose of the tax incentive.

7. Similarly, for the purpose of section 10A or 10B, as long as a unit in the EPZ/EOU/STP itself produces computer programmes and exports them, it should not matter whether the programme is actually written within the premises of the unit. It is, accordingly, clarified that, where a unit in the EPZ/EOU/STP develops software *sur place*, that is, at the client’s site abroad, such unit should not be denied the tax holiday under section 10A or 10B on the ground that it was prepared on site, as long as the software is a product of the unit, i.e., it is produced by the unit.

Software exporting units in EPZs/EOUs commencing production before April 1, 1994

8. Unlike STPs which have come into existence only recently, EPZs are operating from 1981 and EOUs from 1988. Several software exporting units have been operating in EPZs or as EOUs even before STPs were created. Being units in EPZs/EOUs, they were being allowed the tax holiday under section 10A/10B. It has been brought to the notice of the Board that, in several cases, such units are now being denied the tax holiday for earlier years and are being allowed the benefit only for the assessment year 1994-95 onwards. Assessing Officers are often taking the view that, since the *Explanation* of the term “produce”—to include production of computer programmes—has been inserted only with effect from assessment year 1994-95, the existing EPZ/EOU units exporting software would get the benefit only from assessment year 1994-95 and not for earlier assessment years.

9. Such, a view is not in consonance with the intention of the Government. Finance Act, 1993, extended the scope of the tax holiday to units in STPs but did not curtail the scope in respect of existing software exporting units in EPZs/EOUs, already availing of the incentive. The *Explanation* of the term “produce” is clarificatory in nature and was inserted in 1993 primarily because in that year, the tax holiday was extended to units in STPs—which produce only computer software.

10. Accordingly, it is clarified that units in EPZs/EOUs which export software are as much eligible for availing of the five-year tax holiday under sections 10A and 10B as any other units in EPZ/EOU, even for the period prior to the previous year relevant to the assessment year 1994-95. The conditions stipulated in the provisions have, of course, to be fulfilled. The insertion of the *Explanation* of the term “produce” in 1993 should not be taken as a ground for denying the tax holiday to such units for earlier years.’

Complete tax holiday period.—Under section 10A(3) of the 1961 Act (operative for assessment years 1981-82 to 1986-87) the complete tax holiday period extended, ordinarily, to the “initial assessment year” and each of the 4 succeeding assessment years. In other words, section 10A of the 1961 Act protected profits for a maximum period of 5 years from the levy of income-tax. “Initial assessment year” referred to the assessment year relevant to the previous year in which the industrial undertaking began to manufacture or produce articles or things. **But** in cases of existing industries which had exercised option under section 10A(5) of the 1961 Act,

the complete tax holiday period was the period of 5 years as reduced by the number of assessment years already expired before assessment year 1981-82.

Under **section 10A(3) of the 1961 Act, operative for and from assessment year 1987-88**, the complete tax holiday period extends, at the option of the assessee, in respect of any 5 consecutive assessment years falling within a period of 8 years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. The **proviso** to the said section 10A(3) of the 1961 Act provides that in no case the complete tax holiday period shall extend beyond the said period of 8 years. Thus, **for and from assessment year 1987-88**, tax holiday is available, under section 10A of the 1961 Act, for a period of 5 years out of the block of initial 8 years, subject to fulfilment of the requisite conditions. This amendment cannot be given retrospective effect [see, *Expo Packaging v. Asst. CIT*, (2012) 26 taxmann.com 230 (Guj)].

As a result of the **amendments (w. e. f. 1-4-1999) of section 10A(3) of the 1961 Act by the Income-tax (Second Amendment) Act, 1998 (11 of 1999)**, the period of tax holiday has been extended, for and from assessment year 1999-2000, from 5 years to 10 years in order to give added thrust to exports. The condition about the block of initial years has altogether been removed.

The amendment to section 10A of the 1961 Act which came in effect from AY 1999-2000 extending the period of 5 years to 10 years would also be applicable to the assessee and it can claim the same and the decision of AO held unjustified [*CIT v. Midland Latex Products Ltd.*, (2019) 13 ITR-OL 364 (Ker), **following** *CIT v. DSL Software Ltd.*, (2013) 351 ITR 385 (Karn)].

Simultaneous exemption under section 10A of 1961 Act and deduction under Chapter VI-A allowable.—Section 10A of the 1961 Act was an exemption section whereas section 80G is a deduction section and, therefore, there would be no double deduction in respect of same item, even if a benefit under both sections has been claimed and allowed [*CIT v. Infosys Technologies Ltd.*, (2014) 360 ITR 714 (Karn)].

Where trading transactions are not shown at market value.—Section 10A(6) read with section 80-I(8) of the 1961 Act provides that where the goods held for the purposes of the business of the eligible industrial undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible industrial undertaking at the market value, the profits and gains of the business of the industrial undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—Section 10A(6) read with section 80-I(9) of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible industrial undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible industrial undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible industrial undertaking.

Follow-up consequences in subsequent assessment years.—Section 10A(4) of the 1961 Act is a model of use of complicated language where the framers of tax legislation find pleasure in creating labyrinths for the interpreters. During the assessment years of the tax holiday enjoyment under section 10A of the 1961 Act (although there does not appear to be a specific provision in that behalf), it seems that no other tax concession, *e.g.*, investment allowance, partial tax holiday under section 80-I, etc., need be allowed because the income in its entirety is being protected from levy of tax. Section 10A(4) of the 1961 Act resorts to certain deeming provisions which concern the assessment year immediately succeeding the complete tax holiday period.

To make things clear, if the benefit of section 10A of the 1961 Act has been availed of by the taxpayer (say, for five assessment years, *viz.*, 1981-82 to 1985-86), **section 10A(4)(i) of the 1961 Act** deems that for and from the assessment year 1986-87, it shall be presumed that full allowance under the following provisions had been given effect to even though not actually shown in the computation:—

- (a) section 32 of the 1961 Act – depreciation;
- (b) section 32A of the 1961 Act – investment allowance;
- (c) section 33 of the 1961 Act – development rebate;
- (d) section 35 of the 1961 Act – expenditure on scientific research; and
- (e) section 36(1)(ix) of the 1961 Act – expenditure by a company for promoting family planning amongst its employees.

Further, the following provisions shall not be given effect to in the assessment year 1986-87 and subsequent years:—

- (a) section 32(2) of the 1961 Act – unabsorbed depreciation allowance;

- (b) section 32A(3)(ii) of the 1961 Act – unabsorbed investment allowance;
- (c) section 33(2)(ii) of the 1961 Act – unabsorbed development rebate;
- (d) section 35(4) of the 1961 Act – unabsorbed capital expenditure on scientific research; and
- (e) section 36(1)(ix), 2nd proviso of the 1961 Act – unabsorbed capital expenditure on family planning.

Section 10A(4)(ii) of the 1961 Act further provides that unabsorbed business losses [s. 72(1) of the 1961 Act], unabsorbed loss under the head “Capital gains” [s. 74(1) or (w. e. f. 1-4-1988) s. 74(3) of the 1961 Act], and/or unabsorbed deficiency under section 80J(3) of the 1961 Act, relating to the business of the eligible undertaking concerned for any of the relevant assessment years shall not be carried forward or set off in any assessment year immediately succeeding such relevant assessment years.

Section 10A(4)(iii) of the 1961 Act ensures that if benefit under section 10A of the 1961 Act has been availed of for relevant assessment years, then, in such cases, the taxpayer shall not be entitled to claim straight deductions under sections 80HH, 80HHA, 80-I, (w. r. e. f. 1-4-1991) s. 80-IA, (w. e. f. 1-4-2000) s. 80-IB and/or 80J of the 1961 Act, in relation to the profit and gains of the eligible industrial undertaking.

Section 10A(4)(iv) of the 1961 Act further ensures that in computing depreciation allowance under section 32 of the 1961 Act, the “written down value” of any depreciable asset of the eligible industrial undertaking shall be ascertained as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

“Relevant assessment years”, defined.—The expression “relevant assessment years”, as defined in **clause (ii) (operative up to 31-3-1987) of the Explanation to section 10A of the 1961 Act**, meant the initial assessment year and 4 assessment years immediately succeeding the initial assessment year.

According to clause (ii) (operative from 1-4-1987) of the *Explanation* to section 10A of the 1961 Act, the expression “relevant assessment years” meant the five consecutive assessment years specified by the assessee at his option under section 10A(3) of the 1961 Act.

As a result of **substitution (w. e. f. 1-4-1999) of clause (ii) of the Explanation to section 10A of the 1961 Act by the Income-tax (Second Amendment) Act, 1998** (11 of 1999), the expression “relevant assessment years” means the ten consecutive assessment years referred to in section 10A(3) of the 1961 Act.

Option not to avail of the complete tax holiday.—Section 10A appears to grant benefit to the taxpayer. At the same time, it takes away the right to claim benefits under some other provisions of the Act. The taxpayer has to assess the totality of impacts and judge for himself whether availing of the benefits under section 10A of the 1961 Act would be of advantage to him.

Section 10A(7) of the 1961 Act, which has an overriding effect, gives an option to the taxpayer to intimate his Assessing Officer (up to 31-3-1988, Income-tax Officer), by a declaration in writing [(w. e. f. 1-4-1989) before the due date for furnishing the return of income under section 139(1) of the 1961 Act] [(up to 31-3-1989) before the expiry of the due date for furnishing his return] [(up to 31-3-1987) for the “initial assessment year”], that provisions of section 10A of the 1961 Act may not be made applicable to him. If he does so, the provisions of section 10A of the 1961 Act shall have no application in his case for any of the relevant assessment years.

PROVISION OPERATIVE FOR AND FROM 1-4-2001

Nature of provision altered from “exemption” to “deduction” for and from assessment year 2001-02.—The amendment of section 10A of the 1961 Act, by the Finance Act, 2000 with effect from 1-4-2001, specifically uses the words ‘deduction of profits and gains derived by an eligible unit.....from the total income of the assessee’. There are other provisions of section 10A, as amended, which could be suggestive of the fact that by the amendment made by the Finance Act, 2000, section 10A of the 1961 Act had changed its colour from being an exemption section to a provision providing for deduction. Yet, section 10A of the 1961 Act continued to remain in Chapter III which Chapter deals with incomes which do not form part of the total income. Circular No. 7, dated 16-7-2013 as well as Circular No. 1/2013, dated 17-1-2013 also appear to be conflicting and contradictory to each other since in the former Circular, section 10A of the 1961 Act is referred to as providing for deductions whereas the later Circular uses the expression “exemption” while referring to the provisions of sections 10A and 10B of the 1961 Act. Even the return Forms, i.e., Form No. 1, dated 17-8-2001 and Form No. 6 of the 1962 Rules for the assessment year 2012-13 are equally contradictory.

The retention of section 10A of the 1961 Act in Chapter III after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what is provided by the section as amended, in contrast to what was provided by the unamended section. The true and correct purport and effect of the amended section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word ‘deduction’ in section 10A of the 1961 Act by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by section 10A of

the 1961 Act, it has to be understood that the section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.

The difference between the two expressions 'exemption' and 'deduction', though broadly may appear to be the same, *i.e.*, immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different. The above implications cannot be more obvious than from the case of appeals, which have been filed by loss making eligible units and/or by non-eligible assessees seeking the benefit of adjustment of losses against profits made by eligible units [*CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274, 290 (SC) = (2017) 291 CTR (SC) 1].

Gamut of deduction under section 10A of 1961 Act shortened, for and from assessment year 2001-02, by confining it to certain export profits.—Under sub-section (1) of the substituted (w. e. f. 1-4-2001) section 10A of the 1961 Act by the Finance Act, 2000 (10 of 2000), an eligible undertaking shall be entitled to a deduction of such profits and gains as are derived by such undertaking from the export of—

- articles or
- things or
- computer software [as defined].

Such deduction is to be allowed with reference to the assessment year relevant to the previous year in which such undertaking begins to manufacture or produce articles or things or computer software, as the case may be.

On a comparison of the provisions of section 10A of the 1961 Act (operative up to 31-3-2001) and those of section 10A of the 1961 Act (operative from 1-4-2001), it may be seen that up to assessment year 2000-01, new undertakings set up in the notified Free Trade Zones and Export Processing Zones were entitled to a complete tax holiday for a period of 10 years. Further, such complete tax holiday was also available to industrial units in notified Electronic Hardware Technology Parks or Software Technology Parks. Such complete tax holiday was to be granted with reference to the entire profits of the eligible industrial units. **However**, section 10A of the 1961 Act [operative from 1-4-2001] grants deduction, for and from assessment year 2001-02, in respect of 100% [in certain specified cases, less than 100%] of the profits and gains from export earnings/profits [received in, or brought into, India by the assessee in convertible foreign exchange within the stipulated period] of new undertakings established in Free Trade Zones, Software Technology Parks, Electronic Hardware Technology Parks or Special Economic Zones, which are engaged in manufacture or production of articles or things or computer software.

Section 10A of the 1961 Act is a special provision in respect of newly established undertakings in free trade zones, etc. It is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports [*CIT v. Tata Elxsi Ltd.*, (2012) 349 ITR 98 (Karn)]. The purpose of section 10A is also to bring more foreign exchange and to encourage export as the Government decides to give some benefit to such undertaking which is helping the nation in bringing foreign exchange, the Revenue should encourage such traders by giving more benefits as contemplated under the provisions of law as enunciated by the Supreme Court [*CIT v. Kshema Technologies Ltd.*, (2016) 381 ITR 435, 441 (Karn)].

The income derived by the assessee from an industrial undertaking to which section 10A of the 1961 Act applies could not be included in the total income of the assessee. Thus, in the instant case, the petitioner was correct in filing the return by excluding the income in terms of section 10A of the 1961 Act [*Siemens Information System Ltd. v. Asst. CIT*, (2007) 293 ITR 548 (Bom)].

The income received by the sale of the software developed was to be treated as a trade receipt and, thus, the assessee held exigible for exemption under section 10A of the 1961 Act [*CIT v. Infosys Technologies Ltd.*, (2012) 349 ITR 598 (Karn)]. Electronic transfer of computer software by the Indian branch to the head office outside India could be said to be sale to head office out of India and assessee would be entitled to exemption under section 10A of the 1961 Act on such export [*Deputy DIT v. Virage Logic International*, (2016) 389 ITR 142 (Del)].

"Manufacture or produce", inclusions.—**Explanation 4 to section 10A of the 1961 Act inserted (w. e. f. 1-4-2004) by the Finance Act, 2003** (32 of 2003), coins an inclusive definition, for the purposes of section 10A of the 1961 Act, of the expression "manufacture or produce" so as to **include** the cutting and polishing of precious and semi-precious stones.

Blending of tea was a manufacturing activity which entitles the assessee for exemption under section 10A of the 1961 Act [*Girnar Industries v. CIT*, (2011) 338 ITR 277 (Ker)]. In this case, it has also been held that though section 10A of the 1961 Act does not contain a definition for 'manufacture', the definition of 'manufacture' contained in section 2(r) of the SEZ Act, 2005, incorporated in section 10AA of the 1961 Act, would apply to section 10A of the 1961 Act also.

The activity of jewellery making process carried on by the assessee amounts to 'manufacture' resulting in exigible for exemption under section 10A of the 1961 Act [*CIT v. Jayshree Gems & Jewellery*, (2014) 362 ITR

272 (Del)]. Where assessee, having received pure gold from a non-resident, converted same into jewellery and thereupon exported it to said non-resident, activity undertaken by assessee amounted to 'manufacture or production' [*CIT v. Lovlesh Jain*, (2011) 16 taxmann.com 366 (Del)].

"Computer software", defined.—As per **clause (i) of Explanation 2 to section 10A of the 1961 Act**, for the purposes of that section, the expression "computer software" **means**—

- (a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
- (b) any customized electronic data or any product or service of similar nature, as may be notified by the CBDT,

which is transmitted or exported from India to any place outside India by any means.

'Computer software' even otherwise, generically, has to be given a wider interpretation since it implies a system or software which would be capable of catering to different services capable of customization having regard to the peculiar needs of a given situation [*CIT v. EDS Electronic Data Systems (India) (P.) Ltd.*, (2012) 27 taxmann.com 152 (Del)].

Thus, with regard to (b), the CBDT has specified the following information technology enabled products or services, as the case may be, namely *vide Notification No. SO 890(E), dated 26-9-2000*:—

- (i) Back-office Operations.
- (ii) Call Centres.
- (iii) Content Development or Animation.
- (iv) Data Processing.

Where assessee was engaged in mobile value added service in its STP unit which involved activity of developing content and conversion of procured content into mobile readable format, same would qualify to be classified as content development/data processing and assessee would be eligible for deduction under section 10A of the 1961 Act [*CIT v. Onmobile Global Ltd.*, (2021) 129 taxmann.com 254 (Karn)].

- (v) Engineering and Design.
- (vi) Geographic Information System Services.
- (vii) Human Resources Services.

The assessee was not providing recruitment services as are normally and generally undertaken by the hiring agents. The assessee was using information technology in scanning the data, processing it, conducting online tests for shortlisted candidates, and analysing their results. The assessee would then further process the list, after referring to the activities by tracking prospective candidates from the data sourcing till the date of hiring. The CATS database got regularly updated and revised in the process. In the last stage, there was an outflow of the list of selected candidates. The expression 'human resource services' was used with reference to the words 'information technology based products or services'; the CBDT was conscious and aware that human resource services can be rendered in India to third party companies, which are stationed abroad. The word 'human' means 'a man or a woman' and the word 'resource', in normal parlance, refers to supply of goods, raw material, etc., which a person can use. When read together, the word 'human resource' would include a large number of services and activities involving humans rendering their services in any business, trade or a profession. It would be incorrect and/or illogical to hold that the process of acquiring and recruiting employees would not be included in the expression 'human resource'. *Cambridge Online Dictionary* defines 'human resource' as people, when considered as an asset that is or can be employed and that is useful to a company, organization, etc. The *Oxford Dictionary of English* defines the expression 'human resource' as the personnel of a business or organisation regarded as a significant asset in terms of skills and abilities. Though ethologically, the objection in holding a personnel as an asset, but the dictionary meanings define an 'asset' as a useful or valuable thing or person. It may be acceptable, if it emphasises and represents paramountcy and eminence attached to personnel. Humanising the word, in the present context, the term 'human resource' would mean personnel of a business organisation and the expression 'service' will mean and include anything associated with the personnel of a business organisation, including their selection or recruitment [*CIT v. ML Outsourcing Services (P.) Ltd.*, (2014) 51 taxmann.com 453 (Del), **SLP granted**: *CIT v. M.L. Outsourcing Services (P.) Ltd.*, (2017) 79 taxmann.com 255 (SC)].

Where assessee-company was engaged in the business of supply of manpower from India to its foreign clients after their recruitment in India, irrespective of the fact whether or not assessee provided training to its employees or employees who were recruited by its clients, assessee was

entitled to deduction under section 10A of the 1961 Act [*CIT v. NTT Data Global Advisory Services (P.) Ltd.*, (2020) 429 ITR 546 (Karn)].

(viii) Insurance Claim Processing.

(ix) Legal Databases.

(x) Medical Transcription.

(xi) Payroll.

(xii) Remote Maintenance.

(xiii) Revenue Accounting.

(xiv) Support Centres.

(xv) Web-site Services.

Where assessee received back office work from the legal department of software companies in the USA and back office standard required a level of control over formulation of editing of content of application, which was possible only with use of information technology, activities of assessee could be classified as data processing, legal databases and remote maintenance [*CIT v. Narendra R Thappetta*, (2020) 428 ITR 485 (Karn)].

Program management system was nothing but a development of software which assisted in management services, therefore, such service could not be said to be excluded from the term 'computer software' [*CIT v. EDS Electronic Data Systems (India) (P.) Ltd.*, (2012) 27 taxmann.com 152 (Del)].

With regard to the clarifications regarding issues relating to export of computer software, reference may be made to *Circular No. 1 of 2013, dated 17-1-2013*: (2013) 350 ITR (St.) 34-38. Similarly, with regard to the clarifications regarding issues relating to allowability of deduction on transfer of technical manpower in the case of software industry, reference may be made to *Circular No. 14 of 2014, dated 8-10-2014*: (2014) 368 ITR (St.) 29-30, **superseding** *Circular No. 12 of 2014, dated 18-7-2014*: (2014) 366 ITR (St.) 1-2.

“Free trade zone”, defined.—The expression “free trade zone” has been defined in **clause (v) of Explanation 2 to section 10A** so as to mean—

—the Kandla Free Trade Zone, and

—the Santacruz Electronics Export Processing Zone.

It also **includes** any other free trade zone which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section 10A of the 1961 Act. In this regard, the Central Government has specified the following free trade zones for the purpose of section 10A of the 1961 Act for the assessment years commencing on or after the 1-4-1988 *vide Notification No. SO 3231, dated 29-9-1987*:—

(i) Falta Export Processing Zone in West Bengal;

(ii) Madras Export Processing Zone in Tamil Nadu;

(iii) Cochin Export Processing Zone in Kerala;

(iv) Noida Export Processing Zone at Noida in Uttar Pradesh.

“Electronic hardware technology park”, defined.—The expression “electronic hardware technology park” has been defined in **clause (iii) of Explanation 2 to section 10A of the 1961 Act** so as to mean any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified by the Government of India in the Ministry of Commerce.

In regard to the above, in exercise of the powers conferred by section 3(1) of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government has notified the amended Electronic Hardware Technology Park (EHTP) Scheme [*Notification No. SO 387(E), dated 30-4-1995*].

“Software technology park”, defined.—The expression “software technology park” has been defined in **clause (vii) of Explanation 2 to section 10A of the 1961 Act** so as to mean any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce.

In regard to the above, in exercise of the powers conferred by section 3(1) of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government has notified the following Schemes:—

(1) Software Technology Parks (STP) Scheme [*Notification No. SO 243(E), dated 22-3-1994*: (1994) 209 ITR (St.) 48-50]; and

(2) Amended Software Technology Parks (STP) Scheme [*Notification No. SO 388(E), dated 30-4-1995*].

The purpose of the Software Technology Parks of India scheme is to encourage exports and gain valuable foreign exchange for the country. Such scheme provides the benefit of converting a domestic tariff area unit into a Software Technology Parks of India unit and that would hold good for tax purposes. The ratio of the *CBDT Circular No. 1 of 2005, dated 6-1-2005* applies to section 10A of the 1961 Act also. In such circumstances, the appellate authority as well as the Tribunal were held justified in extending the benefit of section 10A of the 1961

Act to the unit in question [*CIT v. Expert Outsource P. Ltd.*, (2013) 358 ITR 518 (Karn)]. Even existing DTA units which get converted into STP unit could get benefit of deduction under section 10A of the 1961 Act [*CIT v. Foresee Information Systems (P.) Ltd.*, (2014) 365 ITR 335 (Karn)].

Approval by Inter-Ministerial Standing Committee of Department of Electronics, clarification.—The following *Instruction No. 1 of 2006, dated 31-3-2006*²⁶: (2006) 202 CTR (St.) 1-3 is on the point:—

‘*Deduction under section 10A—Clarification—Reg.*—Section 10A of the Income-tax Act, 1961, provides for 100 per cent. deduction of profits and gains derived by an undertaking from export of articles or things or computer software manufactured or produced by it. The deduction is available for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software. The tax benefit under section 10A is available to an undertaking which fulfils all the following conditions:

- (i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year—
 - (a) commencing on or after 1st April, 1981, in any Free Trade Zone; or
 - (b) commencing on or after 1st April, 1994, in any Electronic Hardware Technology Park or Software Technology Park; or
 - (c) commencing on or after 1st April, 2001, in any Special Economic Zone;
- (ii) it is not formed by the splitting up or the reconstruction of a business already in existence except in the circumstances and within the period specified in section 33B of the Income-tax Act.
- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

2. ‘Software Technology Park’ has been defined to mean any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry.

3. In exercise of the powers conferred by sub-section (1) of section 3 of the Foreign Trade (Development and Regulation) Act, 1992, the Ministry of Commerce notified the Software Technology Park Scheme wherein it was provided that a Software Technology Park may be set up by the Central Government, State Government, Public or Private Sector Undertakings or any combination thereof. An STP may be an individual unit by itself or it may be one of such units located in an area designated as STP Complex by the Department of Electronics. The scheme was required to be administered by the Department of Electronics, Government of India, through Directors of respective Software Technology Parks which form part of the Software Technology Parks of India (STPI), a society established by the Department of Electronics and registered under the Societies Registration Act, 1860. An application in the prescribed form for establishing a STP unit was required to be submitted to the Chief Executive of STP Complex along with the details of the Software project. Such application was to be considered by an Inter-Ministerial Standing Committee (IMSC) constituted under the Chairmanship of Secretary, Department of Electronics, Government of India.

4. Subsequently, *vide Notification No. 4/(RE-95/92-97), dated 30th April, 1995*, issued by the Direct General (Foreign Trade), Ministry of Commerce, in exercise of powers conferred in sub-section (1) of section 3 of the Foreign Trade (Development and Regulation) Act, 1992, notified the amended STP Scheme. Para. 2.3 of the aforesaid notification provides that the scheme is administered by the Department of Electronics, Government of India, through Directors of respective STPs which form part of the STPL, a society established by the Department of Electronics and registered under the Societies Registration Act, 1860. An application in the prescribed format for establishing a STP unit may be submitted to the Chief Executive of STP Complex along with the details of the software project. Such application will be considered by an Inter-Ministerial Standing Committee constituted under the Chairmanship of Secretary, Department of Electronics.

5. Instances have been brought to the notice of the Board that a large number of units registered/ approved by the Directors of the STPI are claiming deduction under section 10A whereas the STP scheme requires approval by the Inter-Ministerial Standing Committee of the Department of Electronics. Accordingly, the cases of such claimants have been reopened by the filed authorities.

6. The matter has been examined in consultation with the officers of the Department of Information Technology (earlier, Department of Electronics). In view of the ambiguity in the legal status of the approval by Director of STPs, the Inter Ministerial Standing Committee will meet to consider the approvals by Director of STPs issued in the past. Therefore, with a view to avoid infructuous demand raised in assessment and reassessment of assessee claiming deduction under section 10A, it has been decided that the claim of deduction under section 10A of the Income-tax Act, shall not be denied to STP units only on the ground that

26. Also see, *PIB Press Release, dated 31-3-2006*.

the approval/registration to such units has been granted by the Directors of Software Technology Parks. However, it has to be ensured that all other conditions specified in section 10A are fully satisfied before allowing any such claim.

7. In cases where assessments/reassessments have already been completed, and the claim under section 10A has been disallowed only on the ground that the approval to the STP has not been granted by the Inter-Ministerial Standing Committee in accordance with the Scheme, the demand so arising should be kept in abeyance until further orders.'

A letter dated 6-5-2009, issued by the Board to the Joint Secretary, Ministry of Commerce and Industry wherein a distinction had been drawn between the provisions of sections 10A and 10B of the 1961 Act and in which it had been clarified that a unit approved by a director under the Software Technology Parks Scheme would be allowed exemption only under section 10A of the 1961 Act as a software technology park unit and not under section 10B of the 1961 Act as a 100% export oriented unit though considerations which apply for granting approval under sections 10A and 10B of the 1961 Act may, to an extent, overlap yet deliberate segregation of these two benefits by statute reflects Parliamentary intention that to qualify for benefit under either section, specific procedure enacted for that purpose has to be followed [*CIT v. Regency Creations Ltd.*, (2013) 353 ITR 326 (Del)]. Thus, the approvals granted by the directors of the Software Technology Parks of India would be deemed to be valid inasmuch as the directors were functioning under the delegated authority of the Inter-Ministerial Standing Committee. Therefore, the Tribunal was right in coming to the conclusion that the approval granted by the directors of the Software Technology Parks of India was sufficient approval so as to satisfy the conditions relating to approvals under section 10A of the 1961 Act [*CIT v. Technovate E Solutions P. Ltd.*, (2013) 354 ITR 110 (Del)].

Assessee was entitled to deduction in respect of profits attributable to export turnover for the entire relevant year even though registration as an STPI unit was obtained only on 4-3-2000 [*CIT v. Soffia Software Ltd.*, (2015) 370 ITR 146, 154 (Mad) = (2015) 281 CTR (Mad) 594]. Thus, mere fact that assessee had initiated production prior to its registration as STPI, it would not disentitle assessee from claiming benefit under section 10A of the 1961 Act [*Nagesh Chundur v. CIT*, (2013) 358 ITR 521 (Mad)]. Where assessee began operation prior to the date of registration with STPI but export of goods commenced only after registration with STPI, assessee was eligible for deduction under section 10A of the 1961 Act [*CIT v. Expert Outsource (P.) Ltd.*, (2013) 358 ITR 518 (Karn)].

“Special economic zone”, defined.—Under clause (viii) of *Explanation 2 to section 10A of the 1961 Act*, an exhaustive definition of the expression “special economic zone” has been coined, for the purposes of that section 10A of the 1961 Act, so as to mean a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section 10A of the 1961 Act.

Section 10A of 1961 Act not to apply to any undertaking being referred to in section 2(zc) of the Special Economic Zones Act, 2005 (28 of 2005).—**Section 10A(7B) of the 1961 Act (inserted w. e. f. 10-2-2006)** by the **Special Economic Zones Act, 2005 (28 of 2005)** mandates that the provisions of section 10A of the 1961 Act shall not apply to any undertaking, being a Unit referred to in section 2(zc) of the Special Economic Zones Act, 2005 (28 of 2005), which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after 1-4-2006, in any Special Economic Zone.

Eligibility criteria for eligible undertakings.—The benefit of section 10A of the 1961 Act is available to an undertaking which fulfils all the following conditions laid down in **section 10A(2) of the 1961 Act**, namely:—

- (i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to assessment year—
 - 1981-82 or any subsequent assessment year, in any free trade zone;
 - 1994-95 or any subsequent assessment year, in any electronic hardware technology park or, as the case may be, software technology park;
 - 2001-02 or any subsequent assessment year, in any special economic zone [subject to the provisions of section 10A(7B) of the 1961 Act];
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act;
- (iii) it is not formed by the transfer to the new business of machinery or plant previously used for any purpose, subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the **Explanation 1 to section 80-I(2) of the 1961 Act**, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business. While

calculating this limit of 20%, total value of machinery and plant used in business is to be taken into consideration and not total value of plant and machinery which assessee was using earlier and which assessee has transferred to the new undertaking [see, *CIT v. Processor Systems (I) (P.) Ltd.*, (2012) 20 taxmann.com 662 (Karn)].

Newly established undertaking means an undertaking of an assessee independent of all other undertakings that he is already in possession. Mere fact that there is common management or common accounts would not lead to conclusion that they are not separate undertakings [*CIT v. Wipro GE Medical System Ltd.*, (2014) 50 taxmann.com 181 (Karn)]. Since the deduction under section 10A of the 1961 Act is available to each undertaking, it has been held that all the 31 units cannot be treated as separate undertakings for the purposes of availing of the benefit under section 10A of the 1961 Act [*HCL Technologies v. Asst. CIT*, (2015) 377 ITR 483, 495 (Del) = (2015) 278 CTR (Del) 345, **SLP granted**: *HCL Technologies Ltd. v. Asst. CIT*, (2018) 91 taxmann.com 460 (SC)].

Where assessee-company purchased new plant and machinery, capitals introduced by directors were from their own sources and not by transferring from existing concern, and out of 70 employees employed, only 8 employees were related to existing concern, assessee-company could not be said to be a restructured company so as to deny deduction under section 10A of the 1961 Act [*CIT v. Sagun Gems (P.) Ltd.*, (2013) 31 taxmann.com 120 (Raj)]. Where STPI unit established by assessee for which section 10A of the 1961 Act deduction was claimed was not formed by splitting up or reconstruction or transfer of used assets of an existing unit, assessee would be entitled for said deduction even though assessee continued to carry out its business from non-STPI unit also [*CIT v. Quest Informatics Pvt. Ltd.*, (2015) 372 ITR 526 (Karn), **SLP withdrawn**: *CIT v. Quest Informatics (P.) Ltd.*, (2020) 116 taxmann.com 112 (SC)].

There is no requirement in law that assessee should own machinery before claiming deduction under section 10A of the 1961 Act rather the requirement of law is that assessee should use machinery or plant in business [*CIT v. Processor Systems (I) (P.) Ltd.*, (2012) 20 taxmann.com 662 (Karn)].

There is no prohibition on shifting of business with lock, stock and barrel in order to get benefit of exemption under section 10A of the 1961 Act. Therefore, where assessee, having shifted her business of manufacturing various electronic items from a non-SEZ to FTZ and claimed exemption under section 10A of the 1961 Act, said claim of assessee was to be allowed [*Smt. Sangita Agarwal v. CIT*, (2012) 18 taxmann.com 97 (Cal)]. Where the assessee had transferred its place of existing business to a new place located in STPI area and got approval from concerned authorities, assessee was entitled to deduction under section 10A of the 1961 Act [*CIT v. SRA Systems Ltd.*, (2021) 129 taxmann.com 118 (Mad)]. Where assessee set up two new units with fresh investment, new plant and machinery, fresh set of employees and different customers, said units could not be said to be formed by reconstruction or an expansion of earlier business. Though permission of STPI for those units was sought by way of an expansion, assessee would be entitled to exemption under section 10A of the 1961 Act for the said units [*Principal CIT v. Hinduja Ventures Ltd.*, (2017) 397 ITR 139 (Bom)].

It was clear, on facts, that during the previous year relevant to the assessment year 2001-02, the ownership of the assessee-company was not transferred by any means and, thus, the assessee-company was right in claiming entitlement to deduction under section 10A(1) of the 1961 Act [*Zycus Infotech P. Ltd. v. CIT*, (2011) 331 ITR 72 (Bom)].

Assessee which acquired an entire software division set up in Software Technology Park as a going concern on slump sale basis in October 1994 was entitled to exemption under section 10A of the 1961 Act [*CIT v. Sonata Software Ltd.*, (2012) 343 ITR 397 (Bom)].

Sale proceeds of exported items also needed to be received in, or brought into, India in convertible foreign exchange within the stipulated period.—As ordained by **section 10A(3)**, section 10A of the 1961 Act applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange,—

—within a period of six months from the end of the previous year, or

—within such further period as the competent authority may allow in this behalf.

According to **Explanation 2 to section 10A(3) of the 1961 Act**, the sale proceeds referred to in section 10A(3) of the 1961 Act shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

The foreign exchange was realized by the assessee within the period stipulated in law. The assessee had realized a larger amount in terms of Indian rupees as a result of a foreign exchange fluctuation that took place in the course of the export transaction and the gains had to be taken into account for the purpose of section 10A of the 1961 Act [*CIT v. Gem Plus Jewellery India Ltd.*, (2011) 330 ITR 175 (Bom), **followed in** *Principal CIT v.*

Lionbridge Technologies (P.) Ltd., (2018) 12 ITR-OL 287 (Bom) and *Principal CIT v. Lionbridge Technologies Pvt. Ltd.*, (2018) 12 ITR-OL 292 (SC)].

Assessee is entitled to benefit under section 10A of the 1961 Act where the foreign exchange is received and remitted through the proper channel notwithstanding that there is no express order granting approval by the RBI as it has not been rejected [*Wipro Ltd. v. Deputy CIT*, (2016) 382 ITR 179, 251 (Karn) = (2016) 282 CTR (Karn) 346].

Extension of time for realization of export proceeds by competent authority under FEMA can be said to be approval granted by competent authority under section 10A(3) of the 1961 Act and assessee would be entitled to benefit under section 10A of the 1961 Act in respect of such export proceeds [*CIT v. Morgan Stanley Advantage Services P. Ltd.*, (2011) 339 ITR 291 (Bom)]. Also see, *CIT v. Tyco Electronics Corporation of India (P.) Ltd.*, (2012) 22 taxmann.com 267 (Karn).

“Convertible foreign exchange”, defined.—The expression “convertible foreign exchange” has been defined in **clause (ii) of Explanation 2 to section 10A of the 1961 Act** so as to mean foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force.

“Competent authority”, defined.—As per **Explanation 1 to section 10A(3) of the 1961 Act**, for the purposes of this section 10A(3) of the 1961 Act, the expression “competent authority” means—

- the Reserve Bank of India, or
- such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Conditions to be fulfilled for claiming deduction.—Where an assessee wants to claim the benefit of section 10A of the 1961 Act, he must export articles or things or computer software. Secondly, the export may be done directly by him or through other exporters after fulfilling the conditions mentioned therein. Thirdly, such an export should yield foreign exchange which should be brought into the country. If all these three conditions are fulfilled, then the object of enacting section 10A of the 1961 Act is fulfilled and the assessee would be entitled to the benefit of exemption from payment of the income-tax on the profits and gains derived by the undertaking from the export [*Principal CIT v. Broadcom India Pvt. Ltd.*, (2019) 415 ITR 380 (Karn), following *CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719 (SC)].

It is not necessary for undertaking to personally export goods manufactured/ software developed by it outside country; it may export goods outside India by itself or through any other STP unit and once said goods have been exported and foreign exchange is directly attributable to such export, section 10A of the 1961 Act is attracted and such exporter would be entitled to benefit of deduction [*Preludesys India Ltd. v. Asst. CIT*, (2021) 127 taxmann.com 809 (Mad)].

Mandatory furnishing of return of income for claiming deduction.—**The Finance Act, 2005** (18 of 2005) has mandated by **inserting (w. e. f. 1-4-2006) a proviso below section 10A(1A) of the 1961 Act** that no deduction under section 10A shall be allowed to such an assessee who does not furnish the return of income on or before the due date specified under section 139(1) of the 1961 Act.

Report of an accountant must be furnished.—As mandated by **section 10A(5) of the 1961 Act**, the deduction under section 10A of the 1961 Act shall not be admissible for any assessment year beginning on or after 1-4-2001 [i.e., for and from assessment year 2001-02] unless the assessee furnishes in **Form No. 56F** [as prescribed by **Rule 16D of the 1962 Rules** (operative between 27-9-2000 and 29-7-2021)], [(up to 31-3-2020) along with the return of income,] the report of an accountant, as defined in the *Explanation* below section 288(2) of the 1961 Act [(w. e. f. 1-4-2020) before the specified date referred to in s. 44AB of the 1961 Act], certifying that the deduction has been correctly claimed in accordance with the provisions of section 10A of the 1961 Act.

In *CIT v. WEB Commerce (India) P. Ltd.*, (2009) 318 ITR 135 (Del), **SLP dismissed**: (2010) 320 ITR (St.) 20 (SC)], it has been held that the benefit of section 10A of the 1961 Act would be available to the assessee even though it did not file the audit report along with the return. Thus, provisions are directory and not mandatory in nature [see, *CIT v. Axis Computers (India) (P.) Ltd.*, (2009) 178 Taxman 143 (Del)].

Customs bonding, not a requirement.—In order to start the unit in Software Technology Park, the permission is required. Once permission is obtained and the unit is started in Software Technology Park after 1-4-1994, the assessee is entitled to the benefit under section 10A of the 1961 Act. Customs bonding is not a requirement or a condition precedent for granting exemption under section 10A of the 1961 Act [*CIT v. Caritor (India) P. Ltd.*, (2014) 369 ITR 463, 467 (Karn)].

Maintenance of separate accounts, not a requirement.—Maintenance of separate accounts for section 10A of the 1961 Act units and non-section 10A of the 1961 Act units was not mandatory for grant of deduction under section 10A of the 1961 Act [*Virtusa Consulting Services (P.) Ltd. v. Deputy CIT*, (2022) 442 ITR 385 (Mad)].

It was only directory in accordance with the RBI conditions, Government notification and the 1961 Act [*CIT v. IBM Global Services India (P.) Ltd.*, (2020) 429 ITR 386 (Karn)]. Thus, non-maintenance of separate accounts regarding STP unit and other unit cannot be ground to deny exemption under section 10A of the 1961 Act when assessee is otherwise entitled to exemption [*CIT v. Fusion Software Engg. (P.) Ltd.*, (2012) 18 taxmann.com 57 (Karn)].

Quantum of deduction.—The quantum of deduction under section 10A(1) of the 1961 Act is 100% of the ‘eligible profits’ for the ‘tax holiday period’.

However, as provided in the 3rd proviso [inserted (w. e. f. 1-4-2003) by the Finance Act, 2002 (20 of 2002)] to section 10A(1) of the 1961 Act, the deduction under section 10A(1) of the 1961 Act shall be limited, for assessment year 2003-04, to 90% of the ‘eligible profits’.

Special provisions as to quantum of deduction in case of an eligible undertaking in any SEZ.—By the Finance Act, 2002 (20 of 2002), sub-section (1A) has been inserted (w. e. f. 1-4-2003) in section 10A of the 1961 Act and by the Finance Act, 2003 (32 of 2003), for the then existing sub-section (1A), sub-sections (1A), (1B) and (1C) have been substituted (w. e. f. 1-4-2004) in section 10A of the 1961 Act. The provisions of that section 10A(1A) override the provisions of section 10A(1) of the 1961 Act, by engrafting a *non obstante* clause “Notwithstanding anything contained in sub-section (1)”.

According to that section 10A(1A) of the 1961 Act, the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after 1-4-2003 [*i.e.*, for and from assessment year 2003-04] in any special economic zone [as defined] shall be in the following manner:—

- (i) 100% of ‘eligible profits’ for a period of **five** consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter [s. 10A(1A)(i) of the 1961 Act]
- (ii) 50% of the ‘eligible profits’ for further **two** consecutive assessment years, and thereafter [s. 10A(1A)(i) of the 1961 Act]
- (iii) for the next **three** consecutive assessment years, so much of the amount not exceeding 50% of the profits 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 called the ‘Special Economic Zone Reinvestment Allowance Reserve Account’) to be created and utilised for the purposes of the business of the assessee in the manner laid down in section 10A(1B) [s. 10A(1A)(ii) of the 1961 Act].

Requisite conditions for allowing deduction under section 10A(1A)(ii) of 1961 Act.—According to section 10A(1B) of the 1961 Act, the deduction under section 10A(1A)(ii) of the 1961 Act shall be allowed only if the following conditions are fulfilled, namely:—

- (a) the amount credited to the Special Economic Zone Reinvestment Allowance Reserve Account is to be utilised—
 - (i) for the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and
 - (ii) until the acquisition of new machinery or plant as aforesaid, for the purposes of the business 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;
- (b) the particulars, as has been prescribed in **Form No. 56FF** [as prescribed in **Rule 16DD of the 1962 Rules**] have been furnished by the assessee in respect of new machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

Section 10A(1C) of the 1961 Act takes care of a situation where any amount credited to the Special Economic Zone Reinvestment Allowance Reserve Account under section 10A(1A)(ii) of the 1961 Act,—

- (a) has been utilised for any purpose other than those referred to in section 10A(1B) of the 1961 Act; or
- (b) has not been utilised before the expiry of the period specified in section 10A(1B)(a)(i) above.

In case of (a) above, the amount so utilised shall be deemed to be the profits in the year in which the amount was so utilised and shall be charged to tax accordingly. Whereas, in case of (b), the amount not so utilised shall

be deemed to be the profits in the year immediately following the period of three years specified in section 10A(1B)(a)(i) of the 1961 Act and shall be charged to tax accordingly.

Eligible profits available for deduction.—Under section 10A of the 1961 Act, operative for and from assessment year 2001-02, the profits and gains which are eligible for deduction under section 10A of the 1961 Act are only those profits and gains as are **derived** by an eligible undertaking **from** the export of articles or things or computer software.

As mandated by **section 10A(4) of the 1961 Act** [substituted (w. e. f. 1-4-2001) by the **Finance Act, 2001** (14 of 2001)], for the purposes of sections 10A(1) and 10A(1A) [(up to 31-3-2003) section 10A(1) of the 1961 Act], the **profits derived from export** of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover [as defined] in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

Thus, the eligible profits (*i.e.*, export profits) can be arrived at by adopting the following formula:

Total profits of the business of the undertaking

$$\times \frac{\text{Export turnover [as defined]}}{\text{Total turnover (Export + Domestic turnover)}}$$

To take a concrete example:

- (i) Total profits of the business of the undertaking = ₹ 10,00,000
- (ii) Export turnover = ₹ 40,00,000
- (iii) Total turnover = ₹ 50,00,000

In such a case, the eligible profits (*i.e.*, export profits) would work out at

$$₹ 10,00,000 \times \frac{₹ 40,00,000}{₹ 50,00,000} = ₹ 8,00,000$$

Therefore, it is clear that though the assessee may be having more than one undertaking for the purpose of section 10A of the 1961 Act, it is the profit derived from export of articles or things or computer software from the business of the undertaking alone that has to be taken into consideration and such profit is not to be included in the total income of the assessee. It is only after the deduction of the said profits and gains, the income of the assessee has to be computed.

The profits derived from export of computer software for the purposes of section 10A(1) of the 1961 Act in so far as the assessment year 2001-02 was concerned, would have to be computed on the basis of the turnover of the undertaking, which was exactly what the assessee had done and this was how it was originally assessed [*Techspan India P. Ltd. v. ITO*, (2006) 283 ITR 212 (Del), **affirmed in** *ITO v. Techspan India Pr. Ltd.*, (2018) 404 ITR 10 (SC)].

If assessee was entitled to deduction under section 10A of the 1961 Act as STP unit, mere fact that assessee had claimed any income as long-term capital gain should not come in way of granting deduction under section 10A of the 1961 Act [*CIT v. Infosys Technologies Ltd.*, (2012) 349 ITR 598 (Karn)].

Clarification in case of on site development of computer software outside India.—Clarificatory provisions have been enacted (**w. e. f. 1-4-2001**) in **Explanation 3** to **section 10A of the 1961 Act** by the **Finance Act, 2001** (14 of 2001). According to that **Explanation 3**, for the removal of doubts, it has been declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

Since assessee was engaged in on site development of software programs which were delivered at premises of client at work site in the foreign country and there was no need for full-fledged infrastructure facility in India, assessee was to be allowed exemption under section 10A of the 1961 Act on its new unit [*CIT v. L & T Valdel Engineering (P.) Ltd.*, (2020) 119 taxmann.com 443 (Karn)]. Assessee would be eligible for deduction even if export of computer software had not been executed by assessee itself entirely but part of on-site work was sub-contracted to its associate enterprise [*CIT v. Mphasis Software & Service India (P.) Ltd.*, (2015) 62 taxmann.com 165 (Karn)].

Deemed export profits for assessment year 2001-02.—As provided in the **third proviso** [operative between 1-4-2001 and 31-3-2002] to **section 10A(1) of the 1961 Act**, the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed 25% of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.

Interest income, whether 'income derived from profits and gains'.—In *CIT v. Menon Impex P. Ltd.*, (2003) 259 ITR 403, 404 (Mad), the Tribunal has been held not right in law in holding that the interest income derived by the assessee from funds in connection with letter of credit was income derived from the profits of the business of the industrial undertaking so as to be entitled to get the benefit of section 10A of the 1961 Act for the assessment year 1985-86. This is so because the interest received by the assessee was on deposits made by it in the banks. It is that deposit which is the source of income. The mere fact that the deposit made was for the purpose of obtaining letters of credit which letters of credit were in turn used for the purpose of the business of the industrial undertaking does not establish a direct nexus between the interest and the industrial undertaking.

Where interest income arises in the ordinary course of export business of the undertaking even though not as a direct result of export but from the bank deposits, etc., such income held to be eligible for 100% deduction under section 10A of the 1961 Act [*CIT v. Hewlett Packard Global Soft Ltd.*, (2018) 403 ITR 453 (Karn—FB) = (2017) 299 CTR (Karn) 118 (FB)]. Also see, *CIT v. Sankhya Technologies (P.) Ltd.*, (2020) 427 ITR 318 (Mad).

Claim for deduction was to be allowed in respect of income earned from sale of export quota and interest on margin money deposited for opening letters of credit [*Camiceria Apparels India (P.) Ltd. v. Asst. CIT*, (2019) 103 taxmann.com 238 (Mad)].

Notional interest.—Notional interest could never form a part of the assessee's income and, thus, the assessee's claim that the same is to be excluded under section 10A of the 1961 Act stands unsustainable in law [*Thomson Press (India) Ltd. v. CIT*, (2015) 379 ITR 222, 242 (Del) = (2015) 281 CTR (Del) 271].

Rental income.—Where assessee-company had taken certain area on lease in STPI and had sub-leased portion of the same to two units, rental income received from the said two units would be eligible for deduction [*Principal CIT v. Infosys Ltd.*, (2023) 147 taxmann.com 520 (Karn)].

Rendering technical services abroad.—Income derived from rendering technical services abroad held eligible for deduction under section 10A of the 1961 Act [*CIT v. Hewlett-Packard Globalsoft Pvt. Ltd.*, (2016) 380 ITR 386, 398 (Karn)].

Disallowed amounts.—Deduction shall also be allowed on profit increased by amount of any disallowance [*Principal CIT v. Lionbridge Technologies (P.) Ltd.*, (2017) 86 taxmann.com 101 (Bom), **SLP granted:** *Principal CIT v. Lionbridge Technologies Pvt. Ltd.*, (2018) 96 taxmann.com 495 (SC)]. Also see, *Principal CIT v. BMC Software India (P.) Ltd.*, (2019) 109 taxmann.com 277 (Bom), **SLP dismissed:** *Principal CIT v. BMC Software India (P.) Ltd.*, (2019) 109 taxmann.com 278 (SC).

Deemed profits under section 41 of 1961 Act.—**Following** the decision of *CIT v. Hewlett Packard Global Soft Ltd.*, (2018) 403 ITR 453 (Karn—FB) = (2017) 299 CTR (Karn) 118 (FB), it has been held that assessee held entitled to exemption in respect of profits taxed under section 41 on account of reversal of entries with regard to stock options given to employees in the preceding assessment years [*California Software Co. Ltd. v. CIT*, (2020) 422 ITR 514, 520 (Mad)].

Provisions written back.—Provisions written back with respect to link charges and annual day expenses would be allowable as deduction [*CIT v. Cognizant Technology Solutions India (P.) Ltd.*, (2023) 151 taxmann.com 401 (Mad), **SLP dismissed:** *CIT v. Cognizant Technology Solutions of India (P.) Ltd.*, (2023) 454 ITR 1 (SC)].

“Export turnover”, defined.—The definition of the expression “export turnover” has been given in **clause (iv) of Explanation 2 to section 10A of the 1961 Act** so as to **mean** the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into India by the assessee in convertible foreign exchange in accordance with section 10A(3) of the 1961 Act.

However, it **does not include** freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

Foreign currency expenses.—Expenses incurred in foreign currency not to be excluded from ‘export turnover’ for the purpose of computation of deduction under section 10A of the 1961 Act [*CIT v. Tata Elxsi Ltd.*, (2016) 382 ITR 654, 656 (Karn)]. Where assessee-company incurred expenditure in foreign currency development of software at client's site outside India, since assessee had neither rendered any technical services nor had earned any receipt from rendering technical services to any outsider in foreign country, said expenditure was not to be reduced from export turnover for purpose of computing deduction [*CIT v. Aztec Software Technology Ltd.*, (2020) 428 ITR 245 (Karn)]. Also see, *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 301 (Karn), **SLP dismissed:** *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 302 (SC).

Foreign exchange fluctuation.—In *CIT v. Pentasoft Technologies Ltd.*, (2012) 347 ITR 578 (Mad), it has been held that the benefit of section 10A of the 1961 Act should be allowed to the assessee when fluctuation in foreign exchange rate was solely relatable to the export business of the assessee and the higher rupee value was earned by virtue of such exports carried out by the assessee.

ISO quality certification expenses.—The total expenses incurred by the assessee being much higher, i.e., ₹ 23,52,000, which sum was allowable as expenditure, and, thus, the grant being 50% of the expenses incurred in obtaining the ISO quality certification would qualify for exemption under section 10A of the 1961 Act [*CIT v. Perot Systems TSI India Ltd.*, (2012) 349 ITR 563 (Del)].

Sale to STP/SEZ units.—Computer software sales made to STP/SEZ units would not be excluded from 'export turnover' for computing deduction under section 10A of the 1961 Act [*Wipro Ltd. v. Addl. CIT*, (2021) 125 taxmann.com 101 (Karn)].

Subsidy.—Subsidy received from parent company not to be included in 'total turnover' as it had nothing to do with rendering or export of services of the software [*CIT v. Sun Life India Service P. Ltd.*, (2016) 381 ITR 516, 517 (Pun)].

Miscellaneous.—Deemed export, reimbursement of expenses, delayed export proceeds, VAT/GST, etc., would form part of 'total income' [*CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 301 (Karn), **SLP dismissed**: *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 302 (SC)].

'Export turnover' and 'total turnover', relation between.—When a particular word is not defined by the Legislature and an ordinary meaning is to be attributed to it, the ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is 'export turnover' [*Principal CIT v. Cypress Semiconductors Technology India Pvt. Ltd.*, (2018) 408 ITR 531 (Karn), **following** *CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719 (SC)]. Also see, *CIT v. Khoday India Ltd.*, (2012) 17 taxmann.com 267 (Karn); *Deputy CIT v. Dell International Services India (P.) Ltd.*, (2012) 21 taxmann.com 15 (Karn); *Principal CIT v. Tesco Hindusthan Service Centre (P.) Ltd.*, (2018) 96 taxmann.com 74 (Karn), **SLP dismissed**: *Principal CIT v. Tesco Hindusthan Service Centre (P.) Ltd.*, (2018) 96 taxmann.com 76 (SC); *CIT v. SRA Systems Ltd.*, (2021) 129 taxmann.com 118 (Mad).

Since export turnover has been defined by Parliament and there is a specific exclusion of freight, telecommunication charges and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the 'total turnover' for the purposes of the application of the formula [*CIT v. Gem Plus Jewellery India Ltd.*, (2011) 330 ITR 175 (Bom)]. Thus, telecommunication charges [*CIT v. Tata Elxsi Ltd.*, (2012) 349 ITR 98 (Karn) and *CIT v. Samsung Electronics Co. Ltd.*, (2013) 350 ITR 65 (Karn), **affirmed in** *CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719 (SC); *Principal CIT v. McAfee Software (India) Pvt. Ltd.*, (2018) 11 ITR-OL 705 (SC)] as well as travelling, boarding and conveyances expenses [*CIT v. Quality Engineering & Software Technologies (P.) Ltd.*, (2012) 20 taxmann.com 171 (Karn)] are to be excluded both from 'export turnover' as well as 'total turnover'.

With regard to the above, the CBDT has clarified *vide Circular No. 4 of 2018, dated 14-8-2018*: (2018) 407 ITR (St.) 1 that the issue whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10A of the Act on the ground that they are attributable to delivery of articles or things or computer software outside India as well as whether charges for providing technical services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10A of the Act on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in providing technical services outside India has been finally settled by the Hon'ble Supreme Court *vide* its judgment dated 24-4-2018, in the case of *CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719, 730 (SC) in the following terms:—

'If the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under section 10A of the 1961 Act are allowed only in export turnover but not from the total turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the respondent which could have never been the intention of the Legislature. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication, etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.'

In view of the above, freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover", while working out deduction admissible under section 10A of the Act to the extent they are attributable to the delivery of articles or things or computer software outside India. Similarly, expenses incurred in foreign exchange for providing the technical services outside India are to be

excluded from both “export turnover” and “total turnover” while computing deduction admissible under section 10A of the Act. Thus, all charges/expenses specified in *Explanation 2(iv)* to section 10A of the Act, are liable to be excluded from total turnover also for the purpose of computation of deduction under section 10A of the Act. Also see, *CIT v. GE India Technology Centre (P.) Ltd.*, (2021) 125 taxmann.com 168 (Karn).

Expenses incurred in foreign exchange for providing the technical services outside were to be allowed to be excluded from the ‘total turnover’ [*CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719 (SC), **affirming** *CIT v. Samsung Electronics Co. Ltd.*, (2013) 350 ITR 65 (Karn) and **followed in** *IBS Software Services Pvt. Ltd. v. Deputy CIT*, (2018) 12 ITR-OL 196 (Ker); *Principal CIT v. Lionbridge Technologies Pvt. Ltd.*, (2018) 12 ITR-OL 292 (SC)]. Also see, *Principal CIT v. Sasken Communication Technologies Ltd.*, (2019) 412 ITR 468 (Karn); *Principal CIT v. Mizpah Publishing Services (P.) Ltd.*, (2021) 434 ITR 663 (Mad); *Cherrytec Interlisolve Ltd. v. Asst. CIT*, (2021) 128 taxmann.com 246 (Mad); *CIT v. iSoft R & D (P.) Ltd.*, (2021) 127 taxmann.com 884 (Mad). Where Assessing Officer excluded expenditure incurred in foreign currency from ‘export turnover’ by alleging that the same was incurred for purpose of rendering technical services, in view of the fact that technical services rendered by the assessee was not on a stand-alone basis, but it was an integral part of software development because assessee was bound to render all assistance to foreign entity, artificial split up of transaction by the Assessing Officer, that too without any materials on his file, was wholly unsustainable [*Polaris Consulting & Services Ltd. v. Deputy CIT*, (2019) 417 ITR 441 (Mad)].

Unrealised sale proceeds could neither be included in ‘export turnover’ nor in ‘total turnover’ calculation [*Polaris Consulting & Services Ltd. v. Deputy CIT*, (2019) 417 ITR 441 (Mad), **applying** *CIT v. HCL Technologies Ltd.*, (2018) 404 ITR 719 (SC)]. **However**, unrealized export proceeds has been held to be included in ‘export turnover’ and in turn also in ‘total turnover’ [*CIT v. Maars Software International Ltd.*, (2019) 13 ITR-OL 11 (Mad)].

Sales return [*CIT v. L.C.C. Infotech Ltd.*, (2018) 94 taxmann.com 117 (Cal)] or foreign exchange fluctuation loss [*CIT v. Kshema Technologies Ltd.*, (2016) 381 ITR 435 (Karn)] has also to be reduced both from ‘export turnover’ and ‘total turnover’ for the purpose of computing deduction.

Where trading transactions are not shown at market value.—Section 10A(7) of the 1961 Act read with section 80-IA(8) of the 1961 Act provides that where the goods held for the purposes of the business of the eligible industrial undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible undertaking at the market value, the profits and gains of the business of the undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—Section 10A(7) read with section 80-IA(10) of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible undertaking.

Mere fact that high profit was earned in an EOU and loss was shown in a non-EOU, by itself, cannot lead to conclusion that for claiming deduction under section 10A of the 1961 Act with regard to EOU, excessive profits were shown [*CIT v. Schmetz India (P.) Ltd.*, (2012) 26 taxmann.com 336 (Bom)]. Where there was nothing on record to show that the profits arrived at by the assessee in respect of section 10A of the 1961 Act unit carrying on business of manufacturing industrial sewing machine needles was not in normal course of its business, Assessing Officer was not justified in estimating profits of section 10A of the 1961 Act unit by invoking the provisions of section 10A(7) of the 1961 Act [*CIT v. Schmetz India (P.) Ltd.*, (2016) 384 ITR 140 (Bom)].

Reference may also be made to *CIT v. H.P. Global Soft Ltd.*, (2012) 342 ITR 263 (Karn).

Allocation of expenses between section 10A of 1961 Act undertakings and non-section 10A of 1961 Act undertakings.—Acceptance of the head count method of distribution of expenses which was adopted by the assessee for allocation of indirect expenses between the STP unit and the non-STP unit held to be justified. Merely because there can be more than one method of apportioning common expenses between STP and domestic units, method of head count followed by the assessee cannot be discarded, that too mid-way, even though it was not questioned at any time in past [*CIT v. EHPT India P. Ltd.*, (2013) 350 ITR 41 (Del)].

Expenses of corporate office were to be allowed on *ad hoc* percentage of 20% and not based on turnover of various undertakings for purpose of deductions under section 10A of the 1961 Act [*CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 301 (Karn), **SLP dismissed:** *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 302 (SC)]. **However**, in *CIT v. IBM Global Services India (P.) Ltd.*, (2020) 429 ITR 386 (Karn), it was held that apportionment of common expenses of the STPI and non-STPI unit of the assessee was to be done on basis of

turnover of each of these units so as to compute deduction under section 10A of the 1961 Act in respect of the STPI unit.

Deduction under section 10A of 1961 Act, available at which stage of computation.—Deduction under section 10A of the 1961 Act has to be given at stage when profits and gains of business are computed in first instance, *i.e.*, anterior to application of provisions of section 72 of the 1961 Act which deals with carry forward and set off of business losses [*CIT v. Black & Veatch Consulting Pvt. Ltd.*, (2012) 348 ITR 72 (Bom); *CIT v. Schmetz India (P.) Ltd.*, (2012) 26 taxmann.com 336 (Bom); *CIT v. Indusa Infotech Services (P.) Ltd.*, (2014) 45 taxmann.com 34 (Guj)]. Also see, *CIT v. Russan Pharma Ltd.*, (2019) 107 taxmann.com 111 (Bom), **SLP dismissed**: *CIT v. Russan Pharma Ltd.*, (2019) 107 taxmann.com 112 (SC).

In this regard, the CBDT *vide Circular/Instruction No. 7/(DV) of 2013, dated 16-7-2013*: (2013) 356 ITR (St.) 7-10 has clarified that the deduction is to be allowed from the total income of the assessee. The term “total income” has been defined in section 2(45) of the Income-tax Act and it means the total amount of income referred to in section 5, computed in the manner laid down in the Income-tax Act. The income computed under various heads of income in accordance with the provisions of Chapter IV of the Income-tax Act shall be aggregated in accordance with the provisions of Chapter VI of the Income-tax Act, 1961. This means that first the income/loss from various sources, *i.e.*, eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act. Thereafter, the income from one head is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act, there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or section 10A, 10B, etc., of the Act, the same shall be allowed in computing the total income of the assessee. If after aggregation of income in accordance with the provisions of sections 70 and 71 of the Act, the resultant amount is a loss (pertaining to the assessment year 2001-02 and any subsequent year) from eligible unit, it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.

In *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274, 290 (SC) = (2017) 291 CTR (SC) 1, the **above controversy has been set at rest**. It was held that from a reading of the relevant provisions of section 10A of the 1961 Act, it is more than clear that the deductions contemplated therein is *qua* the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794, dated 9-8-2000. If the specific provisions of the Act provide that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No. 794, dated 9-8-2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage, the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in sections 70, 72 and 74 of the 1961 Act would be premature for application. The deductions under section 10A of the 1961 Act, therefore, would be prior to the commencement of the exercise to be undertaken under Chapter VI for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression ‘total income of the assessee’ in section 10A of the 1961 Act has already been dealt with earlier and in the overall scenario unfolded by the provisions of section 10A of the 1961 Act, the aforesaid discord can be reconciled by understanding the expression “total income of the assessee” in section 10A of the 1961 Act as ‘total income of the undertaking’. Thus, it has been concluded though section 10A of the 1961 Act is a provision for deduction, the stage of deduction would be while computing the GTI of the eligible undertaking under Chapter IV of the 1961 Act and not at the stage of computation of the total income under Chapter VI. In other words, deduction under section 10A of the 1961 Act was to be allowed before determining gross total income and without setting off business loss of non-section 10A of the 1961 Act unit with profit of section 10A of the 1961 Act unit. Also see, *CIT v. J.P. Morgan Services India (P.) Ltd.*, (2017) 393 ITR 24 (SC); *Principal CIT v. Makino India (P.) Ltd.*, (2017) 393 ITR 291 (SC); *Principal CIT v. Rangsons Electronics Pvt. Ltd.*, (2017) 398 ITR 619, 621 (SC); *CIT v. Amnet Systems (P.) Ltd.*, (2022) 138 taxmann.com 333 (Mad); *CIT v. Cognizant Technology Solutions India (P.) Ltd.*, (2023) 151 taxmann.com 401 (Mad), **SLP dismissed**: *CIT v. Cognizant Technology Solutions of India (P.) Ltd.*, (2023) 454 ITR 1 (SC).

In view of the Supreme Court decision in *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274, 290 (SC) = (2017) 291 CTR (SC) 1, as discussed above, the following cases are **no longer good law**: *CIT v. Yokogawa India Ltd.*, (2012) 341 ITR 385 (Karn); *CIT v. TEI Technologies Pvt. Ltd.*, (2014) 361 ITR 36 (Del).

Set-off of losses.—Losses under section 10A of the 1961 Act units or non-section 10A of the 1961 Act units can be set off against profits of section 10A of the 1961 Act units before deduction under section 10A of the 1961 Act [*CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274 (SC) = (2017) 291 CTR (SC) 1]. Also see, *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 301 (Karn), **SLP dismissed**: *CIT v. Wipro Ltd.*, (2022) 134 taxmann.com 302 (SC). As a sequitur, where losses of unit eligible for deduction under section 10A of the 1961 Act were already set-off against other business income of assessee, such losses again could not be carried forward and set-off against eligible profits of same unit in subsequent year [*Wipro Ltd. v. Addl. CIT*, (2021) 125 taxmann.com 101 (Karn)].

Brought forward unabsorbed depreciation and losses of unit income of which is not eligible for deduction under section 10A of the 1961 Act cannot be set off against current profit of eligible unit for computing deduction under section 10A of the 1961 Act [*CIT v. Black & Veatch Consulting Pvt. Ltd.*, (2012) 348 ITR 72 (Bom)].

Tax holiday period.—The eligible undertaking shall be entitled to the deduction under **section 10A(1) of the 1961 Act**, ordinarily, for a period of 10 consecutive years beginning with the assessment year relevant to the previous year in which the eligible undertaking begins to manufacture or produce such articles or things or computer software.

Unless relief granted for first assessment year in which claim is made and accepted is withdrawn or set aside, AO cannot withdraw relief for subsequent assessment years [*CIT v. Western Outdoor Interactive (P.) Ltd.*, (2012) 349 ITR 309 (Bom)].

Exceptions to tax holiday period.—The **first proviso to section 10A(1) of the 1961 Act** carves out an exception and takes care of a situation where in computing the total income of the eligible undertaking for any assessment year, its profits and gains had not been included by application of the provisions of section 10A of the 1961 Act as it stood immediately before its substitution (w. e. f. 1-4-2001) by the Finance Act, 2000 (10 of 2000).

In such a situation, such undertaking shall be entitled to deduction referred to in section 10A(1) of the 1961 Act only for the **unexpired period** of the aforesaid ten consecutive assessment years [see, *CIT v. Abad Exim (P.) Ltd.*, (2018) 97 taxmann.com 139 (Ker); *CIT v. Tata Consultancy Services*, (2020) 121 taxmann.com 380 (Bom)].

The **second proviso** [as subsequently amended (w. e. f. 1-4-2001) by the Finance Act, 2001 (14 of 2001)] to **section 10A(1) of the 1961 Act** carves out another exception and takes care of a situation where an undertaking initially located in any free trade zone [as defined] or export processing zone is subsequently located in a special economic zone [as defined] by reason of conversion of such free trade zone or export processing zone into a special economic zone.

In such a situation, the period of 10 consecutive assessment years referred to in section 10A(1) of the 1961 Act shall be reckoned from the assessment year relevant to the previous year in which the undertaking began to manufacture or produce such articles or things or computer software in such free trade zone or export processing zone.

Tax holiday period to be curtailed on transfer of the ownership or the beneficial interest in the undertaking.—As ordained by **section 10A(9) of the 1961 Act** [operative between 1-4-2001 and 31-3-2004], where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under section 10A(1) of the 1961 Act shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

Thus, where an undertaking, which is eligible for deduction under section 10A(1) of the 1961 Act for assessment years 2001-02 to 2009-10, transfers its ownership during the previous year 2005-06, deduction under section 10A(1) of the 1961 Act shall not be allowed to the assessee for the assessment years 2006-07 to 2009-10.

Tax holiday period to be continued in case of succession of a firm or a sole proprietary concern by a company in certain cases.—**Section 10A(9A) of the 1961 Act** [operative between 1-4-2003 and 31-3-2004] overrides the provisions of section 10A(9) of the 1961 Act by engrafting a *non obstante* clause “Notwithstanding anything contained in sub-section (9)”. That section 10A(9A) of the 1961 Act contemplates a situation where, as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company **and** the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company.

In such a situation, the deduction under section 10A(1) of the 1961 Act shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place.

It is provided in **clause (a) of the proviso to section 10A(9A) of the 1961 Act** that, in order to avail the provisions of section 10A(9A) of the 1961 Act, in the case of a firm,—

- (i) the aggregate of the shareholding in the company of the partners of the firm is not less than 51% of the total voting power in the company; and
- (ii) their shareholding continues to be as such for the period for which the company is eligible for deduction under section 10A of the 1961 Act.

On the other hand, in order to avail the provisions of section 10A(9A), **clause (b) of the proviso to section 10A(9A) of the 1961 Act** mandates that in the case of a sole proprietary concern,—

- (i) the shareholding of the sole proprietor in the company is not less than 51% of the total voting power in the company; and
- (ii) his shareholding continues to remain as such for the period for which the company is eligible for deduction under section 10A of the 1961 Act.

*Change in the shareholding of the company to be regarded as transfer in certain cases.—***Explanation 1** [operative between 1-4-2001 and 31-3-2004] to **section 10A of the 1961 Act** enacts certain deeming provisions for the purposes of section 10A of the 1961 Act and takes care of a situation, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than 51% of the voting power are not beneficially held by persons who held the shares of the company carrying not less than 51 per cent. of the voting power on the last day of the year in which the undertaking was set up.

In such a situation, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking.

However, the **proviso to Explanation 1** carves out an exception and enacts that nothing contained in *Explanation 1* to section 10A of the 1961 Act shall apply to any change in the shareholding of the company as a result of—

- (a) its becoming a company in which the public are substantially interested [as defined in section 2(18) of the 1961 Act]; or
- (b) disinvestment of its equity shares by any venture capital company or venture capital fund.

Although the expressions ‘venture capital company’ and ‘venture capital fund’ have not been defined in section 2 of the 1961 Act which coins certain definitions for the purposes of the 1961 Act, these expressions have been defined, *inter alia*, in clauses (a) and (b) of *Explanation 1* to section 10(23FB) of the 1961 Act for the purposes of that section only. Inspiration in that regard may be taken from such definitions.

Special provisions enacted in case of transfer of eligible undertaking under a scheme of amalgamation or demerger.—**Section 10A(7A) of the 1961 Act (inserted w. e. f. 1-4-2004)** contemplates a situation where any undertaking of an Indian company [as defined in section 2(26) of the 1961 Act] which is entitled to the deduction under section 10A of the 1961 Act is transferred, before the expiry of the period specified in section 10A of the 1961 Act, to another Indian company in a scheme of *amalgamation* [as defined in section 2(1B) of the 1961 Act] or *demerger* [as defined in section 2(19AA) of the 1961 Act].

In such a situation,—

- (i) no deduction shall be admissible under section 10A of the 1961 Act to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and
- (ii) the provisions of section 10A of the 1961 Act shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

Where a company transferred its entire undertaking to assessee and the said company had benefit of section 10A of the 1961 Act in respect of said undertaking, assessee-succesor company would be entitled to deduction under section 10A of the 1961 Act for the remaining (or unexpired) period [*CIT v. Heartland KG Information Ltd.*, (2013) 359 ITR 1 (Mad)].

Deduction under section 10A of 1961 Act allowable, illustrations.—(1) The moment the assessee satisfied the provisions of section 10A(2)(i) of the 1961 Act and the second requirement, namely, registration as a software technology park in accordance with the scheme of the Government of India, the assessee held entitled to the benefit of the provisions of section 10A of the 1961 Act [*Nagesh Chundur v. CIT*, (2013) 358 ITR 521 (Mad)].

If the claim in question could be favourably considered under any of the special deduction provisions and on the conditions specified therein being satisfied, there did not exist any justifiable ground for the Revenue to contend that the assessee shall not be entitled to have the benefit of section 10A of the 1961 Act and, so, the assessee was rightly entitled to exemption under section 10A of the 1961 Act [*CIT v. Heartland KG Information*].

Ltd., (2013) 359 ITR 1 (Mad)]. Making of a claim under section 80HHE of the 1961 Act in one assessment year will not preclude an assessee from claiming benefit under section 10A of the 1961 Act in respect of same unit in a succeeding assessment year [*CIT v. Damco Solutions (P.) Ltd.*, (2011) 11 taxmann.com 365 (Del); *Principal CIT v. E-Funds International India (P.) Ltd.*, (2015) 379 ITR 292 (Del)].

(2) Where assessee has manufactured, produced and exported software and substantiated by the Tribunal on the basis of reports of STPI and Export Promotion Council as such, then it could claim exemption under section 10A or 10B or 80HHE of the 1961 Act [*Principal CIT v. Amadeus India Pvt. Ltd.*, (2017) 395 ITR 659, 677 (Del)].

Where appellate authorities on basis of audit report, agreement with STPI, certificate in respect of custom boarding arrangement of assessee and payment received from various parties through channel of banks, concluded that assessee's activities of software development and export were genuine and, thus, its claim for exemption under section 10A of the 1961 Act was to be allowed, no interference was called for in said order of authorities below [*CIT v. Nova Petrochemicals Ltd.*, (2013) 33 taxmann.com 175 (Guj)]. In other words, where there was permission from Software Technology Parks of India to export software, as well as proof of export, professional competence of assessee in developing software could not be doubted for denying its claim under section 10A of the 1961 Act [*CIT v. Nova Petrochemicals Ltd.*, (2014) 45 taxmann.com 491 (Guj)].

(3) Since software was developed at eligible unit after receiving basic engine from non-eligible unit, therefore, assessee was entitled to benefit of exemption under section 10A of the 1961 Act [*CIT v. Ajay Agarwal (HUF)*, (2018) 99 taxmann.com 18 (Bom), **SLP dismissed**: *CIT v. Ajay Agarwal (HUF)*, (2018) 99 taxmann.com 19 (SC)].

(4) The denial of exemption on the ground that conversion of the proprietorship into partnership disentitled the assessee to the benefit under section 10A of the 1961 Act, was not borne out either from the plain language of sub-sections (9) and (9A) of section 10A of the 1961 Act or in view of Circular No. 7 of 2003, dated 5-9-2003. The said sub-sections were no longer in existence (w. e. f. 1-4-2004), i.e., for and from assessment year 2004-05 and, further, there was also no other provision for disallowance of the benefit to the assessee under section 10A of the 1961 Act. Hence, Tribunal was justified in holding that the assessee was entitled to exemption under section 10A of the 1961 Act [*CIT v. Bullet International*, (2012) 349 ITR 267 (All)].

(5) Where assessee had two units out of which one was eligible for exemption under section 10A of the 1961 Act, being located in STPI zone, in view of the fact that there was no defects, deficiencies or wrong entry in the books of account for exempt and non-exempt unit, impugned order passed by AO rejecting assessee's claim on ground that expenditure belonging to eligible unit had been shifted to non-eligible unit so as to increase profits of eligible unit was to be set aside [*Principal CIT v. Cincom Systems India (P.) Ltd.*, (2019) 103 taxmann.com 161 (Del)].

(6) Where assessee, engaged in manufacturing gold medallions from gold bars at SEZ, claimed exemption under section 10A of the 1961 Act which was rejected on the ground that due to low electricity consumption, assessee could not be regarded as carrying out any manufacturing activity, in view of the fact that the process of making gold medallions was not complicated requiring heavy machinery and huge electricity consumption, impugned disallowance was to be deleted [*CIT v. Ridhi Siddhi Bullions Ltd.*, (2017) 85 taxmann.com 273 (Bom)].

(7) Merely because payment against impugned invoice of software export was received in advance, section 10A of the 1961 Act deduction could not be denied on the ground that it was an arbitration award as stamp paper purportedly for arbitration was purchased prior to raising such invoice [*Nuwave E Solutions (P.) Ltd. v. Asst. CIT*, (2014) 360 ITR 351 (Del)].

(8) Where assessee had not claimed exemption under section 10A of the 1961 Act in its return of income but since Tribunal thoroughly examined factual matrix and after taking note of legal position came to the conclusion that assessee was entitled for benefit of exemption under section 10A of the 1961 Act, order passed by Tribunal was perfectly valid and did not call for any interference [*Principal CIT v. Wizard Enterprises (P.) Ltd.*, (2022) 136 taxmann.com 235 (Cal)]. In this regard, reference may be made to section 80A(5) of the 1961 Act which mandates the assessee to make a claim in his return of income for claiming deduction under section 10A of the 1961 Act.

Revised computation, whether allowable.—Where assessee had revised loss shown for its section 10A of the 1961 Act unit at an income for a reason that receipt by section 10A of the 1961 Act unit in US Dollar was not converted into rupees while preparing computation of income, this was not a case where any new claim for deduction under section 10A of the 1961 Act had been made by assessee and, thus, assessee was held entitled for deduction [*Principal CIT v. E-Funds International India P. Ltd.*, (2015) 379 ITR 292 (Del)].

Where assessee had filed a revised computation of income making *suo motu* disallowance and allowance of certain amounts from business income which resulted in revised computation of exemption claimed under

section 10A of the 1961 Act, since it was not a case where any new claim for exemption under section 10A of the 1961 Act was made and there was merely recomputation of claim already made by assessee, such revised computation was to be accepted [*Principal CIT v. Oracle (OFSS) BPO Services Ltd.*, (2019) 13 ITR-OL 127 (Del)].

Alternative claim for deduction, whether permissible.—Where assessee's claim for deduction under section 10B of the 1961 Act was denied by Tribunal for want of certification of assessee as EOU by statutory board, cross-objection filed by assessee seeking benefit under section 10A of the 1961 Act could not be rejected on ground that the same was not raised before the lower authority [*Fast Booking (I) (P.) Ltd. v. Deputy CIT*, (2015) 378 ITR 693 (Del)].

Where assessee filed its return of income and claimed deduction under section 10B of the 1961 Act and the Assessing Officer had disallowed said claim and finalised assessment, acceptance of case of assessee by way of an alternate claim under section 10A of the 1961 Act, without there being a revised return, was illegal and untenable [*Principal CIT v. Paragon Biomedical India (P.) Ltd.*, (2021) 438 ITR 227 (Ker)].

Reference may also be made to *CIT v. Flytxt Technology (P.) Ltd.*, (2017) 398 ITR 717 (Ker).

Follow-up consequences in subsequent assessment years.—By engrafting a *non obstante* clause “Notwithstanding anything contained in any other provision of this Act”, **section 10A(6) of the 1961 Act** overrides any other provision of the 1961 Act and enacts certain special provisions for computing the total income of the assessee—

- of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or
- of any previous year, relevant to any subsequent assessment year.

By virtue of **section 10A(6)(i) of the 1961 Act**, it shall be presumed that full allowance under the following provisions had been given effect to for any of the relevant assessment years ending before 1-4-2001 even though not actually shown in the computation:—

- (a) section 32 of the 1961 Act – depreciation;
- (b) section 32A of the 1961 Act – investment allowance;
- (c) section 33 of the 1961 Act – development rebate;
- (d) section 35 of the 1961 Act – expenditure on scientific research; and
- (e) section 36(1)(ix) of the 1961 Act – expenditure by a company for promoting family planning amongst its employees.

Further, the following provisions shall not be given effect to:—

- (a) section 32(2) of the 1961 Act – unabsorbed depreciation allowance;
- (b) section 32A(3)(ii) of the 1961 Act – unabsorbed investment allowance;
- (c) section 33(2)(ii) of the 1961 Act – unabsorbed development rebate;
- (d) section 35(4) of the 1961 Act – unabsorbed capital expenditure on scientific research; and
- (e) section 36(1)(ix), 2nd proviso of the 1961 Act – unabsorbed capital expenditure on family planning.

Section 10A(6)(ii) of the 1961 Act further provides that unabsorbed business losses [s. 72(1) of the 1961 Act] and/or unabsorbed loss under the head “Capital gains” [s. 74(1) or s. 74(3) of the 1961 Act], relating to the business of the eligible undertaking for any of the relevant assessment years ending before 1-4-2001 shall not be allowed to be carried forward or set off.

In other words, for and from assessment year 2001-02, losses and unabsorbed depreciation of eligible units would be allowable for set off immediately on the expiry of the period of tax holiday, *i.e.*, 10 years. The provisions of sections 32, 32A, 33, 35 and 36(1)(ix) of the 1961 Act do not separately apply to an eligible unit during the period of tax holiday. During the said period, the deduction under the aforesaid sections of the Act are deemed to have been made. Similarly, losses referred to in section 72(1) or 74(1) and 74(3) of the 1961 Act are also eligible to be carried forward to the assessment year following the end of the holiday period commencing from the assessment year 2001-02.

Claim of set-off of business loss for assessment year 2002-03 against profits of erstwhile section 10A of the 1961 Act unit for assessment year 2005-06 held allowable [*CIT v. Shantivijay Jewels Ltd.*, (2015) 374 ITR 520 (Bom)].

Section 10A(6)(iii) of the 1961 Act ensures that if benefit under section 10A of the 1961 Act has been availed of for any or more year(s) comprised in the tax holiday period, then, in such cases, the taxpayer shall not be entitled to claim straight deductions under sections 80HH, 80HHA, 80-I, 80-IA and/or 80-IB of the 1961 Act, in relation to the profit and gains of the eligible undertaking.

Section 10A(6)(iv) of the 1961 Act further ensures that for computing depreciation allowance under section 32 of the 1961 Act, the “written down value” of any depreciable asset of the eligible undertaking shall be ascertained as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

“*Relevant assessment year*”, defined.—**Clause (vi) of Explanation 2 to section 10A of the 1961 Act** coins an exhaustive definition of the expression “relevant assessment year” so as to **mean** any assessment year falling within a period of 10 consecutive assessment years referred to in this section 10A of the 1961 Act.

Matter remanded.—The assessee had not claimed any deduction in respect of AYs 1993-94, 1994-95 and 1995-96 and no exemption had been granted to it. Although it was contended by the Department that a specific bar was created by the 2001 amendment by which the right of the assessee to have sought anything beyond 1-4-2001 was not there and its rights had stood extinguished or exhausted by way of deemed fiction, the later amendment in 2003, allowed 10 years relief. The intent of the Legislature while it made those amendments was not to curtail the relief to an assessee, who had not availed of double benefit. Hence, the matter was remanded to the Tribunal [*Phoenix Lamps Ltd. v. CIT*, (2018) 405 ITR 189 (All), **relying on** *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274 (SC)].

In *India Comnet International v. ITO*, (2008) 304 ITR 322 (Mad), it has been held that there was no direct nexus between the interest earned and the industrial undertaking. The interest received by the assessee was on deposit made by it in the banks. It was that deposit which was the source of the income and, hence, the assessee was not entitled to relief under section 10A of the 1961 Act. The above Madras decision had been **set aside and matter remanded to Tribunal in** *India Comnet International v. ITO*, (2013) 354 ITR 673 (SC) for deciding the same afresh after examining the transaction in question and giving an opportunity to the assessee to produce relevant documents in support of the transaction before deciding the question on law.

Reference may also be made to *Hinduja Global Solutions Ltd. v. Union of India*, (2016) 381 ITR 518, 519 (Bom); *CIT v. Hewlett Packard Global Soft Ltd.*, (2016) 381 ITR 99, 106 (Karn) = (2016) 283 CTR (Karn) 410; *CIT v. Abad Exim (P.) Ltd.*, (2018) 12 ITR-OL 284 (Ker); *Intimate Fashions (India) P. Ltd. v. Asst. CIT*, (2019) 412 ITR 615 (Mad), **relying on** *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274 (SC); *CIT v. IBM Global Services India (P.) Ltd.*, (2020) 429 ITR 386 (Karn); *NTT Data Global Delivery Services Ltd. v. Asst. CIT*, (2021) 123 taxmann.com 226 (Karn).

Reopening of assessment.—Reopening of assessment to disallow section 10A of the 1961 Act deduction held to be justified where materials on record revealed that units of assessee were not independent units, no independent accounts were maintained and there was an overlapping of work and use of resources amongst units and several non-section 10A of the 1961 Act activities were being carried on in section 10A of the 1961 Act units [*Siemens Information Systems Ltd. v. Asst. CIT*, (2012) 343 ITR 188 (Bom)].

Where AO initiated reassessment proceedings on ground that deduction under section 10A of the 1961 Act was wrongly allowed as assessee’s units were situated outside STPI, in view of fact that Assessing Officer had allowed assessee’s claim for deduction after a detailed scrutiny, initiation of reassessment proceedings merely on basis of change of opinion was not justified [*Hitech Outsourcing Services v. Principal CIT*, (2018) 409 ITR 609 (Guj)]. Also see, *Capgemini India (P.) Ltd. v. Asst. CIT*, (2015) 58 taxmann.com 175 (Bom); *Mastek Ltd. v. Asst. CIT*, (2016) 387 ITR 72 (Guj); *Infosys Ltd. v. Deputy CIT*, (2019) 416 ITR 226 (Karn).

Where the Assessing Officer had initiated reopening proceeding against the assessee-company on the ground that it could not be allowed deduction under section 10A of the 1961 Act due to change in its shareholding, however, after recording fact that there was no change in beneficial shareholding of assessee in terms of section 10A(9) of the 1961 Act and after being satisfied that no case made out for reopening, he dropped such reopening proceedings, impugned revision under section 263 of the 1961 Act to examine correctness of such decision taken by the AO dropping reopening proceedings was held to be unjustified [*CIT v. Barry-Wehmiller International Resources (P.) Ltd.*, (2022) 440 ITR 403 (Mad) = (2021) 131 taxmann.com 117 (Mad)].

Reference may also be made to *Siemens Information System Ltd. v. Asst. CIT*, (2007) 295 ITR 333 (Bom); *Direct Information Private Ltd. v. ITO*, (2012) 349 ITR 150 (Bom), **followed in** *CIT v. Western Outdoor Interactive P. Ltd.*, (2012) 349 ITR 309 (Bom); *Naren Sadashiv Burade v. ITO*, (2015) 61 taxmann.com 182 (Guj); *Sella Synergy India (P.) Ltd. v. ITO*, (2016) 388 ITR 539 (Mad); *Vestas Technology R&C Chennai (P.) Ltd. v. Asst. CIT*, (2021) 129 taxmann.com 357 (Mad); *Tata Sons Ltd. v. Deputy CIT*, (2022) 443 ITR 282 (Bom).

Reference application dismissed.—In *CIT v. Cadila Exports P. Ltd.*, C.C. No. 6646 of 1997: (1997) 228 ITR (St.) 19-20 (SC), their Lordships of the Supreme Court have, by an order dated 5-9-1997, dismissed on the ground of delay of 327 days, but keeping the question open, the special leave petition filed by the Department to appeal against the judgment dated 22-2-1996 of the Gujarat High Court in ITA Nos. 9 and 10 of 1996, whereby the High Court rejected the reference application of the Department on the question whether the total income of

the assessee-company arising out of the transaction whereby it manufactured 50 tons of opium and sold it to its sister concern which in turn exported the material and received sale proceeds in foreign exchange was exempt under section 10A of the 1961 Act.

In *CIT v. Cadila Exports P. Ltd.*, (1999) 153 Taxation 585, 586 (Guj), **SLP granted**: (1999) 236 ITR (St.) 214 (SC), the High Court dismissed the reference application of the Department on the question whether the Tribunal was right in confirming the order of the Commissioner (Appeals) directing the Assessing Officer to grant exemption to the assessee as claimed under section 10A of the 1961 Act in respect of business income from the industrial undertaking established in the Kandla Free Trade Zone. The Assessing Officer had refused the exemption on the ground that the assessee had not exported the entire goods manufactured in the unit.

In *CIT v. Cadila Export Pvt. Ltd.*, C.C. No. 563 of 2000: (2000) 242 ITR (St.) 187 (SC), their Lordships of the Supreme Court have, by an order dated 7-2-2000, granted special leave to the Department to appeal against the judgment dated 21-4-1999 of the Gujarat High Court in I.T.A. No. 54 of 1999 whereby the High Court had dismissed the Department's reference application under section 256(2) of the 1961 Act on the question whether the Tribunal was right in confirming the order passed by the Commissioner of Income-tax (Appeals) allowing exemption to the assessee under section 10A of the 1961 Act.

Option not to avail of the tax holiday under section 10A of 1961 Act.—Section 10A of the 1961 Act appears to grant benefit to the taxpayer. At the same time, it takes away the right to claim benefits under some other provisions of the Act. The taxpayer has to assess the totality of impacts and judge for himself whether availing of the benefits under section 10A of the 1961 Act would be of advantage to him. **Section 10A(8) of the 1961 Act**, which has an overriding effect, gives an option to the taxpayer to intimate his Assessing Officer, by a declaration in writing before the expiry of the due date for filing his return, that provisions of section 10A of the 1961 Act may not be made applicable to him. If he does so, the provisions of section 10A of the 1961 Act shall have no application in his case.

The assessee is entitled to the benefit of carry forward of unabsorbed depreciation or loss relating to the assessment years when the appellant had opted out of section 10A of the 1961 Act [*Max Healthscribe Ltd. v. ITO*, (2016) 386 ITR 479, 483 (Karn)].

No deduction to be allowed under section 10A of 1961 Act for and from assessment year 2012-13.—As provided in the 4th proviso to **section 10A(1) of the 1961 Act**, no deduction under section 10A of the 1961 Act shall be allowed to any undertaking for the assessment year beginning on 1-4-2012 and subsequent years.

Thus, the deduction under section 10A of the 1961 Act can be availed of by an eligible undertaking up to and including assessment year 2011-12, on fulfilment of the requisite conditions in that regard.

Omitted/Phased out provisions of section 10B of the 1961 Act

¹[S. 10B. Special provisions in respect of newly established hundred per cent export-oriented undertakings.—(1) Subject to the provisions of this section, a deduction of such profits and gains as are

1. Subs. by the Finance Act, 2000 (10 of 2000), s. 7 (w. e. f. 1-4-2001), for the following:—

^a[S. 10B. Special provision in respect of newly established hundred per cent export-oriented undertakings.—(1) Subject to the provisions of this section, any profits and gains derived by an assessee from a hundred per cent. export-oriented undertaking (hereafter in this section referred to as the undertaking) to which this section applies shall not be included in the total income of the assessee.

- (2) This section applies to any undertaking which fulfils all the following conditions, namely:—

- (i) it manufactures or produces any article or thing;
- ^b[(ia) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1994, its exports of such articles and things are not less than seventy-five per cent of the total sales thereof during the previous year;]
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:
Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any ^c[ten] consecutive assessment years, ^d[* *] beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, ^e[* *]:

^f[* * * *]

- (4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year relevant to any subsequent assessment year,—

- (i) section 32, section 32A, section 33 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;
- (ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward, or set-off where such loss relates to any of the relevant assessment years;
- (iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I ^g[or section 80-IA] ^h[or section 80-IB] in relation to the profits and gains of the undertaking; and
- (iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) Where the undertaking has begun to manufacture or produce articles or things in any previous year relevant to the assessment year commencing before the 1st day of April, 1989, the assessee may, at his option, before the due date for furnishing the return of his income under sub-section (1) of section 139 for the assessment year commencing on the 1st day of April, 1989, furnish to the Assessing Officer a declaration in writing that the provisions of sub-section (1) may be made applicable to him for any five consecutive assessment years falling within a period of eight years beginning with the assessment year commencing on the 1st day of April, 1989, and if he does so, then, the provisions of sub-section (1) shall apply to him for each of such assessment years and the provisions of sub-section (4) shall also apply in computing the total income of the assessee for the assessment year immediately succeeding the last of such assessment years and any subsequent assessment year.

(6) The provisions of sub-section (8) and sub-section (9) of section 80-I shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-I.

(7) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of his income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

Explanation.—For the purposes of this section,—

- (i) “hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;

ⁱ[(ii) “relevant assessment years” means the ten consecutive assessment years referred to in sub-section (3);]

- (iii) “manufacture” includes any—

(a) process, or

(Footnote No. 1 contd.)

derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000 (10 of 2000), the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years:

²[* * * *]:

³[*Provided* ⁴[*further*] that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:]

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the ⁵[1st day of April, 2012], and subsequent years:

⁶[*Provided also* that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.]

(2) This section applies to any undertaking which fulfils all the following conditions, namely:—

- (i) it manufactures or produces any articles or things or computer software;
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(Footnote No. 1 contd.)

(b) assembling, or

(c) recording of programmes on any disc, tape, perforated media or other information storage device;]

^j[(iv) “produce”, in relation to any article or thing referred to in clause (i) of sub-section (2) includes production of computer programmes.]’.

a. Section 10B was inserted by the Finance Act, 1988 (26 of 1988), s. 6 (w. e. f. 1-4-1989).

b. Ins. by the Finance Act, 1994 (32 of 1994), s. 7(a) (w. e. f. 1-4-1995).

c. Subs., for “five”, by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 4(a)(i) (w. e. f. 1-4-1999).

d. The words “falling within a period of eight years” were omitted by the Income tax (Second Amendment) Act, 1998 (11 of 1999), s. 4(a)(ii) (w. e. f. 1-4-1999):

e. The words “specified by the assessee at his option”, were omitted by the Income tax (Second Amendment) Act, 1998 (11 of 1999), s. 4(a)(ii) (w. e. f. 1-4-1999).

f. The proviso was omitted by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 4(a)(iii) (w. e. f. 1-4-1999). Prior to its omission, the proviso stood as follows:—

‘*Provided* that nothing in this sub-section shall be construed to extend the aforesaid five assessment years to cover any period after the expiry of the said period of eight years.’.

g. Ins. by the Finance Act, 1993 (38 of 1993), s. 5 (w. r. e. f. 1-4-1991).

h. Ins. by the Finance Act, 1999 (27 of 1999), s. 90(b) (w. e. f. 1-4-2000).

i. Subs. by the Income-tax (Second Amendment) Act, 1998 (11 of 1999), s. 4(b) (w. e. f. 1-4-1999), for the following:—

‘(ii) “relevant assessment years” means the five consecutive assessment years specified by the assessee at his option under sub-section (3) or sub-section (5), as the case may be;’.

j. Ins. by the Finance Act, 1994 (32 of 1994), s. 4(b) (w. r. e. f. 1-4-1994).

2. The second proviso has been omitted by the Finance Act, 2001 (14 of 2001), s. 7(a) (w. e. f. 1-4-2002). Prior to its omission, the second proviso to section 10B(1) stood as follows:—

‘*Provided further* that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.’.

3. Ins. by the Finance Act, 2002 (20 of 2002), s. 6(a) (w. e. f. 1-4-2003).

4. Subs., for “also”, by the Finance Act, 2006 (21 of 2006), s. 5(a) (w. r. e. f. 1-4-2006).

5. Subs., for “1st day of April, 2011”, by the Finance (No. 2) Act, 2009 (33 of 2009), s. 7 (w. r. e. f. 1-4-2009). Earlier, the figures “2011” substituted, for “2010”, by the Finance Act, 2008 (18 of 2008), s. 6 (w. r. e. f. 1-4-2008).

6. Ins. by the Finance Act, 2006 (21 of 2006), s. 5(b) (w. r. e. f. 1-4-2006).

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

⁷[(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, 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 section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

- (i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years ⁸[ending before the 1st day of April, 2001], in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowances or deduction;
- (ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) ⁹of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set-off where such loss relates to any of the relevant assessment years ¹⁰[ending before the 1st day of April, 2001];
- (iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and
- (iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

¹¹[(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

- (a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

7. Subs. by the Finance Act, 2001 (14 of 2001), s. 7(b) (w. r. e. f. 1-4-2001), for the following:—

‘(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.’.

8. Ins. by the Finance Act, 2003 (32 of 2003), s. 8(a) (w. r. e. f. 1-4-2001).

9. Now section 74(3) has been omitted w. e. f. 1-4-2003 by the Finance Act, 2002 (20 of 2002).

10. Ins. by the Finance Act, 2003 (32 of 2003), s. 8(a) (w. r. e. f. 1-4-2001).

11. Ins. by the Finance Act, 2003 (32 of 2003), s. 8(b) (w. e. f. 1-4-2004).

- (b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company, if the amalgamation or the demerger had not taken place.]

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

¹²[(9) * * *]

¹³[(9A) * * *]

¹⁴[* * *]

Explanation 2.—For the purposes of this section,—

- (i) “computer software” means—

- (a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
(b) any customized electronic data or any product or service of similar nature as may be notified by the Board,

which is transmitted or exported from India to any place outside India by any means;

- (ii) “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of ¹⁵[the Foreign Exchange Management Act, 1999 (42 of 1999)], and any rules made thereunder or any other corresponding law for the time being in force;
(iii) “export turnover” means the consideration ¹⁶[in respect of export by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

12. Sub-section (9) has been omitted by the Finance Act, 2003 (32 of 2003), s. 8(c) (w. e. f. 1-4-2004). Prior to its omission, sub-section (9) stood as follows:—

‘(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.’

13. Sub-section (9A) has been omitted by the Finance Act, 2003 (32 of 2003), s. 8(c) (w. e. f. 1-4-2004). Earlier, sub-section (9A) was inserted by the Finance Act, 2002 (20 of 2002), s. 6(b) (w. e. f. 1-4-2003). Prior to its omission, it stood as follows:—

“(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

- (a) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;
(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section.”

14. *Explanation 1* has been omitted by the Finance Act, 2003 (32 of 2003), s. 8(d) (w. e. f. 1-4-2004). Prior to its omission, *Explanation 1* as originally enacted stood as follows:—

‘*Explanation 1.*—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking:

[*Provided that* nothing contained in this *Explanation* shall apply to any change in the shareholding of the company as a result of—

- (a) its becoming a company in which the public are substantially interested; or
(b) disinvestment of its equity shares by any venture capital company or venture capital fund.]’

The above proviso was inserted by the Finance Act, 2001 (14 of 2001), s. 7(c)(i) (w. r. e. f. 1-4-2001).

15. Subs., for “the Foreign Exchange Regulation Act, 1973 (46 of 1973)”, by the Finance Act, 2013 (17 of 2013), s. 4 (w. r. e. f. 1-4-2013).
16. Subs., for “in respect of export”, by the Finance Act, 2001 (14 of 2001), s. 7(c)(ii) (w. r. e. f. 1-4-2001).

- (iv) “hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;
- (v) “relevant assessment years” means any assessment year falling within a period of ten consecutive assessment years, referred to in this section.]

¹⁷[*Explanation 3*.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

¹⁸[*Explanation 4*.—For the purposes of this section, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.]

Introduction under 1961 Act.—*The Finance Act, 1988*.—By the **Finance Act, 1988** (26 of 1988), **section 10B** has been **inserted (w. e. f. 1-4-1989)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 528, dated 16-12-1988*, as follows:—

‘18. New provision to extend tax holiday to hundred per cent. export-oriented units.—**18.1** Under the provisions of section 10A of the Income-tax Act, 1961 (43 of 1961), a five-year tax holiday is allowed to industrial undertakings manufacturing or producing articles or things in a free trade zone subject to certain conditions. The exemption is available to industrial undertaking which has begun or begins to manufacture or produce articles or things during the previous year relevant to the assessment year commencing on or after 1-4-1981. The tax holiday is at the option of the assessee for five consecutive assessment years falling within the block of eight years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. The term “manufacture” includes processing or assembling or recording of programmes on any disc, tape, perforated media or other information storage device.

18.2 The above tax holiday was not available to a hundred per cent. export-oriented undertaking. Such undertakings were eligible only for deduction out of their export profits under section 80HHC of the Income-tax Act. With a view to providing further incentive for earning foreign exchange, a new section 10B has been inserted by the Finance Act, 1988 (26 of 1988), so as to secure that the income of a hundred per cent. export-oriented undertaking shall be exempt from tax for a period of five consecutive assessment years falling within the block of eight assessment years. The exemption provided under the new section is similar to the one provided to industrial undertakings operating in free trade zones. The exemption under the new provisions will be subject to the following conditions:

- (i) That the unit manufactures or produces any articles or things. The term “manufacture” will include any processing or assembling or recording of programmes on disc, tape, perforated media or other information storage device.
- (ii) That the unit has not been formed by the splitting up or reconstruction of an existing business.
- (iii) That it has not been formed by the transfer to a new business of machinery or plant previously used for any purpose.

Unlike the provisions of section 10A of the Income-tax Act, even the existing hundred per cent. export-oriented undertakings will be eligible to avail of the tax holiday for a full period of five assessment years in a block of eight years. For this purpose, an assessee may, at his option, before the due date for furnishing the return of income for the assessment year 1989-90, furnish to his Assessing Officer a declaration in writing that the exemption may be allowed to him for any five consecutive years falling within a period of eight years beginning with the assessment year commencing on the 1-4-1989. In respect of the new units, *i.e.*, those which begin to manufacture or produce articles or things at any time after the commencement of the previous year relevant to the assessment year 1989-90, the exemption will be available over a period of five consecutive assessment years falling within the block of eight years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce any article or thing. Both in respect of existing and the new units, the assessee will have the option of choosing the five consecutive assessment years in the block of eight years in which he would avail of the exemption.

18.3 As defined in the *Explanation (i)* below sub-section (7) of the newly inserted section 10B of the Income-tax Act, a hundred per cent. export-oriented undertaking, is an undertaking which has been approved

17. Ins. by the Finance Act, 2001 (14 of 2001), s. 7(c)(iii) (w. r. e. f. 1-4-2001).

18. Ins. by the Finance Act, 2003 (32 of 2003), s. 8(e) (w. e. f. 1-4-2004).

as such by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.

18.4 This amendment will come into force with effect from 1-4-1989, and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years. [*Section 6 of the Finance Act, 1988 (26 of 1988)*].

Legislative amendments under 1961 Act.—I. The Finance Act, 1993.—By the Finance Act, 1993 (38 of 1993), **section 10B(4)(iii)** has been **amended (w. r. e. f. 1-4-1991)**.

For the scope and effect of the above amendment, reference may be made to paras. 47 to 47.2 of the *Departmental Circular No. 657, dated 30-8-1993*.

II. The Finance Act, 1994.—By the Finance Act, 1994 (32 of 1994), the following **amendments** have been made—

—**section 10B(2)(ia)** has been **inserted (w. e. f. 1-4-1995)**; and

—**Explanation (iv) to section 10B** has been **inserted (w. e. f. 1-4-1994)**.

The scope and effect of the above insertions have been elaborated in the following portion of the *Departmental Circular No. 684, dated 10-6-1994*, as follows:—

'Restricting five-year tax holiday under section 10B of the Income-tax Act to 100% EOUs exporting at least 75 per cent. of their turnover.—**23.** Under section 10B of the Income-tax Act, a five-year tax holiday is allowed to a 100% export-oriented undertaking (100% EOU) which manufactures or produces any article or thing and is approved by the prescribed Board. This tax holiday is in operation since the assessment year 1989-90.

23.2 100% EOUs, as the name signifies, get special treatment by virtue of the fact that they export their entire produce. However, in order to provide economic flexibility to them and allow them to dispose of the export rejects and by-products, they are allowed to sell 25% of their product in the domestic market. In effect, such units get exemption for 5 years even in respect of profits from the 25% domestic sales allowed to them.

23.3 As long as domestic sales of 100% EOUs are within reasonable limits, such sales getting exempt can be justified as a concession incidental to export. Recently, however, it has come to notice that several units approved as 100% EOUs export less than 75 per cent. of their turnover and sell the balance amount in the domestic market. Such units are, thus, getting the five-year tax holiday even on the profit generated from domestic sales forming more than 25 per cent. of the total sales.

23.4 With a view to ensuring that 100% EOUs avail of the tax exemption only if the exports are substantial, section 10B has been amended restricting the five-year tax holiday to 100% EOUs which export at least 75% of their turnover. Units which, in any previous year, export less than 75% of their turnover will not be allowed the exemption under section 10B in respect of that previous year. They can, in such a case, avail of the normal 100 per cent. deduction under section 80HHC on the export profits. The restriction will apply prospectively to 100% EOUs which commence production on or after 1-4-1994.

23.5 This amendment takes effect from 1-4-1995 and will, accordingly, apply in relation to the assessment year 1995-96 and subsequent years. [*Section 7 Tax holiday for 100% EOUs producing computer software.*—

24. Section 10A of the Income-tax Act provides for a five-year tax holiday to an industrial undertaking which manufactures or produces any article or thing and is set up in notified Free Trade Zones (FTZs). Through the Finance Act, 1993 (38 of 1993), the tax holiday under section 10A was extended to industrial units set up in approved Electronic Hardware Technology Parks (EHTP) or Software Technology Parks (STP). Simultaneously, the scope of the term “produce” was enlarged to include production of computer programmes.

24.2 Under the provisions of section 10B of the Income-tax Act, a five-year tax holiday is allowed to approved 100 per cent. export-oriented undertakings (EOUs) which manufacture or produce any article or thing.

24.3 With a view to enlarging the scope of the tax holiday to approved 100 per cent. EOUs established under the EHTP/STP Schemes for export of computer hardware and software and approved by the prescribed Board, an *Explanation* for the term “produce” has been inserted in section 10B to include production of computer programmes.

24.4 This amendment takes effect from 1-4-1994 and will, accordingly, apply in relation to the assessment year 1994-95 and subsequent years. It will, accordingly, coincide with similar concession extended last year in section 10A to the Computer Hardware and Software Parks. [*Section 7*].

III. The Income-tax (Second Amendment) Act, 1998.—By the Income-tax (Second Amendment) Act, 1998 (11 of 1999), the following **amendments (w. e. f. 1-4-1999)** have been made—

- section 10B(3)** has been **amended** at two places;
- proviso to section 10B(3)** has been **omitted**; and
- Explanation (ii) to section 10B(7)** has been **substituted**.

IV. The Finance Act, 1999.—By the **Finance Act, 1999** (27 of 1999), **section 10B(4)(iii)** has been **amended** (w. e. f. 1-4-2000).

V. The Finance Act, 2000.—By the **Finance Act, 2000** (10 of 2000), **section 10B** has been **substituted** (w. e. f. 1-4-2001).

For the scope and effect of the above substitution, reference may be made to paras. 15 to 15.16 of the *Departmental Circular No. 794, dated 9-8-2000*.

VI. The Finance Act, 2001.—By the **Finance Act, 2001** (14 of 2001), the following **amendments** have been made—

- 2nd proviso to section 10B(1)** has been **omitted** (w. e. f. 1-4-2002);
- section 10B(4)** has been **substituted** (w. e. f. 1-4-2001);
- proviso to Explanation 1 to section 10B** has been **inserted** (w. e. f. 1-4-2001);
- Explanation 2(iii) to section 10B** has been **amended** (w. e. f. 1-4-2001); and
- Explanation 3 to section 10B** has been **inserted** (w. e. f. 1-4-2001).

For the scope and effect of the above amendments, reference may be made to paras. 21 to 21.7 of the *Departmental Circular No. 14 of 2001, dated 9-11-2001*.

VII. The Finance Act, 2002.—By the **Finance Act, 2002** (20 of 2002), the following **amendments** (w. e. f. 1-4-2003) have been made—

- 3rd proviso to section 10B(1)** has been **inserted**; and
- section 10B(9A)** has been **inserted** before *Explanation 1* to section 10B.

For the scope and effect of the above amendments, reference may be made to paras. 19 to 19.11 of the *Departmental Circular No. 8 of 2002, dated 27-8-2002*.

VIII. The Finance Act, 2003.—By the **Finance Act, 2003** (32 of 2003), the following **amendments** have been made—

- sections 10B(6)(i) & (ii)** have been **amended** (w. r. e. f. 1-4-2001);
- section 10B(7A)** has been **inserted** (w. e. f. 1-4-2004);
- sections 10B(9) & (9A)** have been **omitted** (w. e. f. 1-4-2004);
- Explanation 1 to section 10B** has been **omitted** (w. e. f. 1-4-2004); and
- Explanation 4 to section 10B** has been **inserted** (w. e. f. 1-4-2004).

For the scope and effect of the above amendments, reference may be made to paras. 18 to 21.3 of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*.

IX. The Finance Act, 2006.—By the **Finance Act, 2006** (21 of 2006), the following **amendments** (w. e. f. 1-4-2006) have been made—

- 2nd proviso to section 10B(1)** has been **amended**; and
- 4th proviso to section 10B(1)** has been **inserted**.

The scope and effect of the above amendments, as also insertion (w. e. f. 1-4-2006) of a new section 80AC, have been elaborated in the following portion of the *Departmental Circular No. 14/2006, dated 28-12-2006*, as follows:—

‘10. Benefits of certain deductions not to be allowed in cases where return is not filed within the specified time limit.—10.1 Section 139(1) casts an obligation on every assessee to furnish the return of income by the due date. With a view to enforce the compliance in this regard by the assessee who are entitled for deduction under section 10B from their income, a proviso (fourth proviso) to sub-section (1) of section 10B has been inserted so as to provide that no deduction under section 10B shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified in sub-section (1) of section 139. Similarly, with a view to enforce the compliance for furnishing the return of income by the due date by the assessee who are entitled for deductions under section 80-IA or section 80-IAB or section 80-IB or section 80-IC from their income, a new section 80AC has been inserted so as to provide that no deduction under section 80-IA or section 80-IAB or section 80-IB or section 80-IC shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified in sub-section (1) of section 139.

10.2 This amendment takes effect retrospectively from 1-4-2006 and applies in relation to the assessment year 2006-07 and subsequent years. [Sections 5 and 15].

X. The Finance Act, 2008.—By the Finance Act, 2008 (18 of 2008), 3rd proviso to section 10B(1) has been amended (w. e. f. 1-4-2008).

For the scope and effect of the above amendment, reference may be made to paras. 9 to 9.4 of the Departmental Circular No. 1/2009, dated 27-3-2009.

XI. The Finance (No. 2) Act, 2009.—By the Finance (No. 2) Act, 2009 (33 of 2009), 3rd proviso to section 10B(1) has been amended (w. r. e. f. 1-4-2009).

For the scope and effect of the above amendment, reference may be made to paras. 11 to 11.3 of the Departmental Circular No. 5/2010, dated 3-6-2010.

XII. The Finance Act, 2013.—By the Finance Act, 2013 (17 of 2013), section 10B has been amended (w. e. f. 1-4-2013).

For the scope and effect of the above amendment, reference may be made to paras. 33 to 33.4 of the Departmental Circular No. 3 of 2014.

PROVISION OPERATIVE BETWEEN 1-4-1989 AND 31-3-2001

A 100% export-oriented undertaking is eligible for tax holiday under section 10B of 1961 Act.—Under section 10B(1) of the 1961 Act, any profits and gains derived by an assessee from a 100% export-oriented undertaking (EOU) to which section 10B of the 1961 Act applies shall not be included in the total income of the assessee. This tax holiday can be availed of for and from assessment year 1989-90 and is subject to other provisions of section 10B of the 1961 Act.

“Hundred per cent export-oriented undertaking”, defined.—Clause (i) of the Explanation to section 10B of the 1961 Act coins a definition of the expression “hundred per cent. export-oriented undertaking” so as to mean an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.

Eligibility criteria for eligible undertakings.—The benefit of section 10B of the 1961 Act is available to a 100% EOU which fulfils all the following conditions laid down in section 10B(2) of the 1961 Act, namely:—

- (i) it manufactures or produces any article or thing;
- (ii) (w. e. f. 1-4-1995) in relation to an undertaking which begins to manufacture or produce any article or thing on or after 1-4-1994, its exports of such articles or things are not less than 75% of the total sales thereof during the previous year;
- (iii) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act;
- (iv) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the Explanation 1 to section 80-I(2) of the 1961 Act, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business.

It may be noted that the tax concession of section 10B of the 1961 Act is available to all taxpayers including foreign companies and non-resident non-corporate taxpayers.

Assessee-company which had commenced production prior to 1-4-1994 could claim exemption under section 10B of the 1961 Act even if its export was less than 75% of total sales [*CIT v. BAEHAL Software Ltd.*, (2011) 339 ITR 368 (Karn)]. In other words, 100% EOU exporting 75% of its production was eligible for section 10B of the 1961 Act exemption for and from assessment year 1995-96 [*CIT v. WTI Advanced Technology Ltd.*, (2013) 35 taxmann.com 405 (Mad)].

“Manufacture”, defined.—The expression “manufacture”, as defined in clause (iii) of the Explanation to section 10B of the 1961 Act, includes, for the purposes of section 10B of the 1961 Act, any—

- process, or
- assembling, or
- recording of programmes on any disc, tape, perforated media or other information storage device.

“Produce”, defined.—Clause (iv) inserted (w. e. f. 1-4-1994) by the Finance Act, 1994 (32 of 1994) of the Explanation to section 10B of the 1961 Act defines the expression “produce”, in relation to articles or things referred to in section 10B(2)(i) of the 1961 Act, so as to include production of computer programmes.

With regard to the clarifications relating to units producing computer software in EPZs, STPs or 100% EOUs, reference may be made to *Circular No. 694, dated 23-11-1994*.

In this regard, it is also to be noted that **section 10BB** of the 1961 Act has been **inserted (w. r. e. f. 1-4-1994)** by **the Finance Act, 2001 (14 of 2001)** to clarify that where an undertaking derived profits and gains from the production of computer programmes, these shall include profits and gains from processing or management of electronic data. Thus, the words 'production of computer programmes' include 'processing or management of electronic data'.

Complete tax holiday period.—Under **section 10B(3)** of the 1961 Act (**operative for assessment years 1989-90 to 1998-99**) the complete tax holiday period extended, at the option of the assessee, in respect of any 5 consecutive assessment years falling within a period of 8 years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things. It is specifically provided in the **proviso to section 10B(3)** of the 1961 Act that nothing in that section shall be construed to extend the aforesaid 5 assessment years to cover any period after the expiry of the said period of 8 years.

Thus, an assessee, following the financial year as its previous year, who begins to manufacture or produce articles or things within the financial year 1988-89, can avail the benefit under section 10B of the 1961 Act for any of the 5 consecutive assessment years in a block of 8 assessment years 1989-90 to 1996-97. However, it cannot claim benefit of section 10B of the 1961 Act for assessment year 1997-98 because this falls beyond 8 years beginning with the assessment year 1989-90 relevant to the financial year 1988-89 in which the undertaking begins to manufacture or produce articles or things.

However, as provided in **section 10B(5)** of the 1961 Act, where the undertaking has begun to manufacture or produce articles or things in any previous year relevant to assessment year 1988-89 or any earlier assessment year, the assessee can exercise his option by furnishing, before the due date for furnishing the return of his income under section 139(1) of the 1961 Act for the assessment year 1989-90, to the Assessing Officer a declaration in writing that the provisions of section 10B(1) of the 1961 Act may be made applicable to him for any 5 consecutive assessment years falling within a period of 8 years beginning with the assessment year 1989-90. On his doing so, the provisions of section 10B(1) of the 1961 Act shall apply to him for each of such assessment years and the provisions of section 10B(4) of the 1961 Act shall also apply in computing the total income of the assessee for the assessment year immediately succeeding the last of such assessment years and any subsequent assessment year.

As a result of the **amendment (w. e. f. 1-4-1999)** of **section 10B(3)** of the 1961 Act by **the Income-tax (Second Amendment) Act, 1998 (11 of 1999)**, the period of tax holiday has been extended, for and from assessment year 1999-2000, from 5 years to 10 years. The condition about the block of initial years has altogether been removed.

Benefit of tax holiday to a 100% EOU was extended from 5 years to 10 consecutive years and the said period should be counted from the date of commencement of production and since assessee had commenced production in year 1993-94, it would be entitled to tax holiday under amended provision from 1993-94 to 2002-03 [*CIT v. DSL Software Ltd.*, (2013) 351 ITR 385 (Karn), **SLP dismissed**: *CIT v. Deutsche Software Ltd.*, (2017) 399 ITR 570 (SC)]. Also see, *CIT v. Apcus Technology Ltd.*, (2012) 17 taxmann.com 143 (Karn); *CIT v. ITTI (P.) Ltd.*, (2012) 22 taxmann.com 252 (Karn).

In *Saint Gobain Crystals & Detectors (I) Ltd. v. Deputy CIT*, (2021) 123 taxmann.com 206 (Karn), the assessee started manufacturing in the assessment year 1997-98 but did not claim deduction under section 10B for that year as well as subsequent assessment year. For the first time, the claim for deduction under section 10B of the 1961 Act was made for the assessment year 1999-2000. Thus, it has been held that period of 10 consecutive years would begin when assessee actually started claiming relief, *i.e.*, from assessment year 1999-2000, and not from assessment year 1997-98 when manufacture was commenced.

Where trading transactions are not shown at market value.—**Section 10B(6)** read with **section 80-I(8)** of the 1961 Act provides that where the goods held for the purposes of the business of the eligible undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible undertaking at the market value, the profits and gains of the business of the undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—**Section 10B(6)** read with **section 80-I(9)** of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible undertaking.

Follow-up consequences.—Section 10B(4) of the 1961 Act overrides any other provision of the 1961 Act and enacts certain special provisions for computing the total income of the assessee—

- of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or
- of any previous year relevant to any subsequent assessment year.

By virtue of **section 10B(4)(i)** of the 1961 Act, it shall be presumed that full allowance had been given full effect to in the following cases for the vulnerable assessment year(s) even though not actually shown in the computation:—

- (a) section 32 of the 1961 Act – depreciation;
- (b) section 32A of the 1961 Act – investment allowance;
- (c) section 33 of the 1961 Act – development rebate; and
- (d) section 36(1)(ix) of the 1961 Act – expenditure by a company for promoting family planning amongst its employees.

Further, the following provisions shall not be given effect to in the vulnerable assessment year(s):—

- (a) section 32(2) of the 1961 Act – unabsorbed depreciation allowance;
- (b) section 32A(3)(ii) of the 1961 Act – unabsorbed investment allowance;
- (c) section 33(2)(ii) of the 1961 Act – unabsorbed development rebate; and
- (d) section 36(1)(ix), 2nd proviso of the 1961 Act – unabsorbed capital expenditure on family planning.

Section 10B of the 1961 Act cannot be read in isolation of other provisions. It is only an exemption provision. It may be true that even after taking into consideration the unabsorbed depreciation, the assessee may get exemption but nonetheless it could not take only a portion of depreciation just to suit its income for the purpose of *nil* liability and adjust the balance of unabsorbed depreciation against other business income once again to show *nil* liability. When the unabsorbed depreciation could have been taken for arriving an exempted income, the assessee cannot play with the figures for the purpose of showing *nil* liability. The intention of the Legislature was to provide 100% exemption only for export income and not for other income. Thus, unabsorbed depreciation should be adjusted against income of export oriented business only and assessee cannot adjust unabsorbed depreciation against other income so as to take exemption from payment of tax even for other income [*CIT v. Himatsingike Seide Ltd.*, (2006) 286 ITR 255 (Karn), **affirmed in** *Himatsingka Seide Ltd. v. CIT*, (2014) 2 ITR-OL 467 (SC)].

Section 10B(4)(ii) of the 1961 Act further provides that unabsorbed business losses [s. 72(1) of the 1961 Act] and unabsorbed loss under the head “Capital gains” [s. 74(1) or s. 74(3) of the 1961 Act] relating to the business of the eligible undertaking for any of the relevant assessment years shall not be carried forward or set off in the vulnerable assessment year.

Section 10B(4)(iii) of the 1961 Act ensures that if benefit under section 10B of the 1961 Act has been availed of for any or more year(s) comprised in the complete tax holiday period, then, in such cases, the taxpayer shall not be entitled to claim straight deductions under sections 80HH, 80HHA, 80-I, (w. r. e. f. 1-4-1991) s. 80-IA, and/or (w. e. f. 1-4-2000) s. 80-IB of the 1961 Act, in relation to the profit and gains of the eligible undertaking.

Section 10B(4)(iv) of the 1961 Act further ensures that for computing depreciation allowance under section 32 of the 1961 Act for the vulnerable assessment year, the “written down value” of any depreciable asset of the eligible industrial undertaking shall be ascertained as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

“Relevant assessment years”, defined.—The expression “relevant assessment years”, according to **clause (ii) of the Explanation to section 10B** of the 1961 Act, **means** the 5 consecutive assessment years specified by the assessee at his option under section 10B(3) or section 10B(5) of the 1961 Act, as the case may be. Thus, where an assessee avails the benefit of section 10B of the 1961 Act for 5 consecutive assessment years, namely, 1989-90 to 1993-94, the overriding provisions of section 10B(4) of the 1961 Act comes into operation for assessment year 1994-95 and any subsequent assessment year (hereinafter referred to as the vulnerable assessment year).

As a result of **substitution (w. e. f. 1-4-1999)** of **clause (ii) of the Explanation to section 10B** of the 1961 Act by **the Income-tax (Second Amendment) Act, 1998** (11 of 1999), the expression “relevant assessment years” **means** the ten consecutive assessment years referred to in section 10B(3) of the 1961 Act.

In view of the above amendment, benefit of tax holiday to a 100% EOU is extended from 5 years to 10 consecutive years and the said period should be counted from date of commencement of production. In the present case, since assessee had commenced production in year 1993-94, it would be entitled to tax holiday under amended provision from 1993-94 to 2002-03 [*CIT v. DSL Software Ltd.*, (2013) 351 ITR 385 (Karn), **affirmed in** *CIT v. Deutsche Software Ltd.*, (2017) 399 ITR 570 (SC)].

Option not to avail of the complete tax holiday.—Section 10B of the 1961 Act appears to grant benefit to the taxpayer. At the same time, it takes away the right to claim benefits under some other provisions of the Act. The taxpayer has to assess the totality of impacts and judge for himself whether availing of the benefits under section 10B would be of advantage to him. **Section 10B(7)** of the 1961 Act, which has an overriding effect, gives an option to the taxpayer to intimate his Assessing Officer, by a declaration in writing before the expiry of the due date for filing his return under section 139(1) of the 1961 Act, that provisions of section 10B of the 1961 Act may not be made applicable to him. If he does so, the provisions of section 10B of the 1961 Act shall have no application in his case.

PROVISION OPERATIVE FOR AND FROM 1-4-2001

Scope of deduction under section 10B of 1961 Act restricted, for and from assessment year 2001-02, to certain export profits.—Under **sub-section (1)** of the **substituted (w. e. f. 1-4-2001) section 10B** of the 1961 Act by **the Finance Act, 2000** (10 of 2000), a 100% *export-oriented undertaking* (EOU) [as defined] shall be entitled to a deduction of such profits and gains as are derived by such undertaking from the export of—

- articles or
- things or
- computer software* [as defined].

Such deduction is to be allowed with reference to the assessment year relevant to the previous year in which such undertaking begins to manufacture or produce articles or things or computer software, as the case may be.

On a **comparison** of the provisions of section 10B of the 1961 Act (operative up to 31-3-2001) and those of section 10B of the 1961 Act (operative from 1-4-2001), it transpires that up to assessment year 2000-01, any profits and gains derived by an assessee from a 100% EOU was eligible for deduction under the then section 10B of the 1961 Act. **However**, section 10B of the 1961 Act [operative from 1-4-2001] grants deduction, for and from assessment year 2001-02, in respect of 100% [in certain specified cases, less than 100%] of the profits and gains from export earnings [received in, or brought into, India by the assessee in convertible foreign exchange within the stipulated period] of a 100% EOU, which is engaged in the manufacture or production of articles or things or computer software.

“Hundred per cent. export oriented undertaking”, defined.—According to **clause (iv) of Explanation 2 to section 10B** of the 1961 Act, the expression “hundred per cent. export-oriented undertaking” has been defined so as to **mean** an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.

Subsequent to the delegation of this power by the Ministry of Commerce and Industries to the Development Commissioners, such approvals to 100 per cent EOU's are now being granted by the Development Commissioners, which are later ratified by the Board of Approvals. The matter regarding validity of approvals given by Development Commissioners has been examined in the CBDT. It has been decided that an approval granted by the Development Commissioner in the case of an export-oriented unit set up in an Export Processing Zone will be considered valid, once such an approval is ratified by the Board of Approval for EOU scheme [*vide Instruction No. 2/2009, dated 9-3-2009*: (2009) 178 Taxman (St.) 4-5]. The ratification shall be from the date on which the Development Commissioner granted the approval [*Principal CIT v. ECI Technologies Pvt. Ltd.*, (2015) 375 ITR 595, 599 (Guj)]. In *Indus Tegsite (P.) Ltd. v. Deputy CIT*, (2021) 133 taxmann.com 134 (Mad), it has been held that where approval was granted by the Development Commissioner, but since assessee, not due to his default, failed to produce Ratification Certificate from Board of Approval, deduction could not be denied and assessee would be entitled to rely upon approval as long as said approval was not withdrawn.

Section 10B of the 1961 Act is very clear and unambiguous that approval by the competent authority is pre-requisite for grant of benefit under section 10B of the 1961 Act. Hence, it will not be appropriate for the Tribunal to hold that there is no pre-condition that the assessee should have obtained STPI registration before making the claim under section 10B of the 1961 Act [*CIT v. Live Connection Software Solutions P. Ltd.*, (2015) 370 ITR 356, 363 (Mad) = (2015) 280 CTR (Mad) 109].

There is no requirement that export-oriented unit should be newly established. Deduction would commence only from its certification; and if there is no manufacture at the time of certification, deduction would commence from the time of commencement of manufacture [*CIT v. All Koshys All Spices*, (2018) 89 taxmann.com 335 (Ker)].

Where Tribunal granted relief to assessee under section 10B of the 1961 Act by noting that an agreement was entered into between the assessee and the Central Government wherein there was a reference to a resolution passed by the Ministry of Commerce granting status of 100% EOU to assessee, order passed by Tribunal could not have been interfered with [*Principal CIT v. Wizard Enterprises (P.) Ltd.*, (2022) 136 taxmann.com 235 (Cal)].

Merely because approved 100% EOU was getting some work done on job work basis from its sister concern, it could not be deprived of its entity to be an EOU manufacturing unit [*CIT v. Continental Engines Ltd.*, (2011) 338 ITR 290 (Del)].

However, in *CIT v. Regency Creations Ltd.: Valiant Communications Ltd.*, (2013) 353 ITR 326 (Del), it has been held that approval granted to a 100% EOU set up under Software Technology Park Scheme cannot be deemed to be an approval under section 10B of the 1961 Act. Where assessee-company was approved as a 100% EOU by Director, STPI but had not been granted approval by Board of Approval for EOU Scheme, exemption claimed under section 10B would not be granted in view of CBDT Instruction No. 2 of 2009 [*Indus Teqsite (P.) Ltd. v. Ministry of Finance, New Delhi*, (2021) 130 taxmann.com 400 (Mad)].

Reference may also be made to *CIT v. Zealous Web Technologies*, (2016) 68 taxmann.com 379 (Guj).

Whether 'export' or not.—The transaction of delivery of machines manufactured in India by an export-oriented unit to another 100% export-oriented unit in India alleged to be the agent of a foreign buyer, did not amount to 'export out of India' and, thus, the assessee was not entitled to exemption under section 10B of the 1961 Act [*Swayam Consultancy P. Ltd. v. ITO*, (2011) 336 ITR 189 (AP)].

Deemed export undertaken through third party export houses who had exported goods to foreign country and had fetched foreign currency for India would be eligible for deduction under section 10B of the 1961 Act [*Principal CIT v. International Stones India P. Ltd.*, (2018) 12 ITR-OL 244 (Karn)]. Also see, *Metal Closures (P.) Ltd. v. Deputy CIT*, (2019) 102 taxmann.com 71 (Karn), **SLP dismissed**: *Deputy CIT v. Metal Closures (P.) Ltd.*, (2019) 102 taxmann.com 72 (SC); *Granite Mart Ltd. v. ITO*, (2020) 121 taxmann.com 168 (Karn).

"Manufacture or produce", inclusions and exclusions.—The removal of definition clause of 'manufacture' contained in section 10B of the 1961 Act by Legislature through amendment introduced by the Finance Act, 2000 is not with object of restricting benefit of exemption to 100% export-oriented units, only to goods manufactured or produced by them other than through processing [see, *Tata Tea Ltd. v. Asst. CIT*, (2011) 338 ITR 285 (Ker), **SLP dismissed**: *Asst. CIT v. Tata Tea Ltd.*, (2020) 115 taxmann.com 347 (SC)]. Thus, for the time being in force, the term 'manufacture' would include every process which would ultimately result in production of new article having a different character [*CIT v. Pallava Granite Industries (I) (P.) Ltd.*, (2014) 42 taxmann.com 102 (Mad)].

Explanation 4 to section 10B of the 1961 Act inserted (w. e. f. 1-4-2004) by the Finance Act, 2003 (32 of 2003), coins an inclusive definition, for the purposes of section 10B of the 1961 Act, of the expression "manufacture or produce" so as to **include** the cutting and polishing of precious and semi-precious stones. Also see, *J. B. Enterprise v. Asst. CIT*, (2019) 410 ITR 138 (Guj).

The activity of cutting, polishing and sizing granites would be covered within the meaning of the term 'production' and, hence, the assessee was entitled to the benefit under section 10B of the 1961 Act [*CIT v. Fateh Granite Pvt. Ltd.*, (2009) 314 ITR 32 (Bom)]. Step-wise activity of cutting marble blocks and converting the same into polished slabs and tiles constituted 'manufacture or production' [*Grace Exports v. ITO*, (2013) 31 taxmann.com 121 (Raj)].

The assessee was entitled to exemption under section 10B of the 1961 Act on the profit derived by its 100% export oriented unit engaged in blending, packing and export of tea bags and tea packets [*Tata Tea Ltd. v. Asst. CIT*, (2011) 338 ITR 285 (Ker)]. **However**, in *Principal CIT v. V.N. Enterprises Ltd.*, (2021) 439 ITR 624 (Cal), it has been held that where assessee was engaged in purchasing different varieties of tea and blending and packing same for export, such activities undertaken by assessee would not amount to 'manufacture'.

Assessee was engaged in printing and export of books. After receipt of manuscripts from abroad, assessee had to do typesetting, make/process/print on paper and then bind printed pages into books. Thus, it has been held that books are an article or a thing and process involved by assessee was certainly production, if not manufacture [*Replika Press (P.) Ltd. v. Deputy CIT*, (2013) 37 taxmann.com 417 (Del)].

What was purchased by assessee as raw material and exported as handicraft items of dried flowers and parts of plants were totally different items and commercially known as different products. Thus, process involved in producing final product would be 'manufacture' [*CIT v. Deco De Trend*, (2014) 360 ITR 1 (Mad)]. Purchasing of semi-finished garments and making them ready to export constitutes 'manufacture' and, hence, entitled to exemption under section 10B of the 1961 Act [*Principal CIT v. A. P. Export*, (2019) 410 ITR 168 (Cal)].

Where assessee having purchased machine castings from outside parties, polished them and thereupon sold same in market, in view of the fact that a new product came out in the said process, activity carried out by assessee was to be regarded as 'manufacturing activity' [*Deputy CIT v. Tyco Valves & Control India (P.) Ltd.*, (2014) 42 taxmann.com 55 (Guj)].

Processes of sorting, segregating and obtaining copper material from the import of certain scraps and manufacture of iron ingots amounts to 'manufacture' and, therefore, assessee entitled to deduction [*CIT v. Mitesh Implex*, (2014) 367 ITR 85, 98 (Guj) = (2014) 270 CTR (Guj) 66]. Where assessee imported metal scrap

and after segregating such scrap, produced various articles including graded brass metal, metal vires, etc., entire process came within the meaning of ‘manufacture or produce’ [*CIT v. Ambika Recycling*, (2014) 45 taxmann.com 386 (Guj)]. Process of assembling of instruments and apparatus for measuring and detecting ionizing radiators by the assessee constitutes manufacture and, thus, entitled to the benefit of section 10B of the 1961 Act [*CIT v. Saint Gobain Crystals & Detectors India P. Ltd.*, (2016) 380 ITR 226, 232 (Karn)].

When assessee undertakes manufacturing or production activity and in process it results in any scrap, since said scrap attracts nexus between profits and gains derived from export business, income arising from sale of it is eligible for benefit of section 10B of the 1961 Act [*GE BE P. Ltd. v. Asst. CIT*, (2015) 371 ITR 32, 38 (Karn)].

Where assessee undertook detailed engineering drawings and then the work was outsourced for actual manufacture and production as per drawings and specifications, and thereafter goods produced were re-inspected and assembled before they were exported, assessee’s claim for exemption under section 10B of the 1961 Act was to be allowed [*CIT v. Aar Ess Exim P. Ltd.*, (2015) 372 ITR 111, 119 (Del) = (2015) 281 CTR (Del) 143]. Where only a part of manufacturing activities was got done by assessee from outside agency and that too under direct control and supervision of managerial and technical staff available with assessee, assessee was entitled to exemption [*MKU (Armours) P. Ltd. v. CIT*, (2015) 376 ITR 514, 529 (All) = (2015) 279 CTR (All) 504, **SLP granted**: *CIT v. MKU (P.) Ltd.*, (2016) 70 taxmann.com 312 (SC)].

Activities such as ironing, packing, affixing barcode labels, emblem graphics, affixing stickers amounted to ‘manufacture’ or ‘produce’ any article or thing [*Principal CIT v. A.P. Export*, (2019) 410 ITR 168 (Cal)].

Conversion of benzarone crude to benzarone pure would fall within the ambit of the expression ‘manufacture or produce’ as contemplated under section 10B of the 1961 Act [*Principal CIT v. Tonira Pharma Ltd.*, (2019) 415 ITR 503 (Guj)]. Conversion of copper clad glass epoxy laminate sheets into smaller pieces amounts to ‘manufacture’ and assessee entitled to exemption under section 10B of the 1961 Act [*Principal CIT v. Fine Line Circuits Co.*, (2020) 421 ITR 225 (Guj)].

Extraction and processing of iron ore would amount to ‘manufacture or production’ [*CIT v. Sesa Goa Ltd.*, (2021) 436 ITR 17 (Bom)]. Iron ore concentrates manufactured by assessee by process of magnetic separation would amount to ‘manufacturing’ or ‘process’ [*CIT v. Ramacanta Velingkar Minerals*, (2021) 430 ITR 161 (Bom)].

Where assessee was engaged in business of providing contract research related services in field of molecular biology and synthetic chemistry, end result of research work undertaken by assessee amounted to ‘manufacture or production’ of articles or things [*Principal CIT v. Syngene International Ltd.*, (2021) 124 taxmann.com 571 (Karn)].

Assessee not entitled to exemption on training fees received from professionals who were neither employees nor associated with business of manufacture or production of any article or thing of assessee [*Pentamedia Graphics Ltd. v. Asst. CIT*, (2013) 357 ITR 403 (Mad)].

Mere follow up action taken by the assessee for storing and packing snacks doesn’t amount to manufacture or producing an article or thing and, hence, the assessee in question held not exigible for exemption under section 10B of the 1961 Act [*Deepkiran Foods P. Ltd. v. Asst. CIT*, (2014) 361 ITR 437 (Guj)]. Assessee importing spare parts and exporting them in the same condition without involving those parts is any manufacturing activity, provisions of section 10B of the 1961 Act are not attracted [*GE BE P. Ltd. v. Asst. CIT*, (2015) 371 ITR 32, 38 (Karn)].

Garbling pepper to make it edible did not give rise to a new or different commodity from the raw pepper purchased and, therefore, the assessee held not entitled to deduction under section 10B of the 1961 Act [*Nishant Export v. Asst. CIT*, (2018) 401 ITR 401, 404 (Ker)].

“Computer software”, defined.—As per **clause (i) of Explanation 2 to section 10B** of the 1961 Act, for the purposes of that section, the expression “computer software” means—

- (a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
- (b) any customized electronic data or any product or service of similar nature, as may be notified by the CBDT,

which is transmitted or exported from India to any place outside India by any means.

Thus, with regard to (b), the CBDT has specified the following information technology enabled products or services, as the case may be, namely *vide Notification No. SO 890(E), dated 26-9-2000*:—

- (i) Back-office Operations;
- (ii) Call Centres;
- (iii) Content Development or Animation;

- (iv) Data Processing;
- (v) Engineering and Design;
- (vi) Geographic Information System Services;
- (vii) Human Resources Services;
- (viii) Insurance Claim Processing;
- (ix) Legal Databases;
- (x) Medical Transcription;
- (xi) Payroll;
- (xii) Remote Maintenance;
- (xiii) Revenue Accounting;
- (xiv) Support Centres, and
- (xv) Web-site Services.

With regard to the clarifications regarding issues relating to export of computer software, reference may be made to *Circular No. 1 of 2013, dated 17-1-2013*: (2013) 350 ITR (St.) 34-38.

In *CIT v. Ms. Kiran Kapoor*, (2015) 372 ITR 321, 333 (Del) = (2015) 274 CTR (Del) 343, it has been held that the work which ultimately results as the culmination of the assessee's efforts of compiling, editing, digital designing, etc., is transmitted or exported from India to any place outside India by any means. It is, therefore, computer software that are produced or manufactured to qualify for the benefit under section 10B of the 1961 Act. Where assessee was producing customized electronic data and electronic data was received by assessee from its clients who were abroad and same after research and development was sent back as customized electronic data to assessee's clients, assessee was eligible for deduction under section 10B of the 1961 Act [*Marmon Food and Beverage Technologies India (P.) Ltd. v. ITO*, (2021) 435 ITR 327 (Karn)].

Undertakings set up in domestic tariff area subsequently approved as 100% EOU whether eligible for deduction, clarification.—Representations have been received from various quarters as to whether an undertaking set up in domestic tariff area, which is subsequently approved as 100% EOU by the Board appointed by the Central Government in exercise of powers conferred under section 14 of the Industries (Development and Regulation) Act, 1951, is eligible for deduction under section 10B of the Income-tax Act.

In this regard, the CBDT has *vide Circular No. 1 of 2005, dated 6-1-2005* clarified that an undertaking set up in a domestic tariff area (DTA) and deriving profit from export of articles or things or computer software manufactured or produced by it, which is subsequently converted into an EOU, shall be eligible for deduction under section 10B of the Income-tax Act, on getting approval as a 100 per cent. export oriented undertaking. In such a case, the deduction shall be available only from the year in which it has got the approval as 100 per cent. EOU and shall be available only for the remaining period of ten consecutive assessment years, beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as a DTA unit. Further, in the year of approval, the deduction shall be restricted to the profits derived from exports, from and after the date of approval of the DTA unit as 100 per cent. EOU. Moreover, the deduction to such units in any case will not be available after the assessment year 2009-10.

To clarify the above position, certain illustrations are given as follows:

- (i) Undertaking "A" is set up in a domestic tariff area and starts manufacture or production of computer software in financial year 1999-2000 relevant to the assessment year 2000-01. It gets approval as a 100 per cent. EOU on September, 10, 2004, in the financial year 2004-05 relevant to the assessment year 2005-06. Accordingly, it shall be eligible for deduction under section 10B of the 1961 Act from the assessment year 2005-06, *i.e.*, the year in which it fulfils the basic condition of being a 100 per cent. EOU. Further, the deduction shall be available only for the remaining period of ten years, *i.e.*, from the assessment year 2005-06 to the assessment year 2009-10. This deduction under section 10B of the 1961 Act for the assessment year 2005-06 shall be restricted to the profits derived from exports, from and after the date of approval of the DTA unit as a 100 per cent. EOU.
- (ii) Undertaking "B" set up in a domestic tariff area, begins to manufacture or produce computer software in the financial year 1996-97 relevant to the assessment year 1997-98. It gets approval as a 100 per cent. EOU in the financial year 2007-08 relevant to the assessment year 2008-09. No deduction under section 10B of the 1961 Act shall be admissible to undertaking "B" as the period of ten years expires in the financial year 2005-06 relevant to the assessment year 2006-07, prior to its approval as a 100 per cent. EOU.
- (iii) Undertaking "C" is set up in a domestic tariff area in the financial year 2000-01 relevant to the assessment year 2001-02 and engaged in the business of providing computer related services, other

than those notified by the Board for the purposes of section 10B of the 1961 Act. In the financial year 2002-03, it acquires more than 20 per cent. of old plant and machinery and starts manufacturing computer software. It also gets approval as a 100 per cent. EOU in the financial year 2002-03. Undertaking "C" shall not be eligible for deduction under section 10B of the 1961 Act, as there has been transfer of old plant and machinery.

- (iv) Undertaking "D" is set up and starts producing computer software in the financial year 2003-04 relevant to the assessment year 2004-05. It gets approval as a 100 per cent. EOU in the financial year 2006-07 relevant to the assessment year 2007-08. It shall be eligible for deduction under section 10B of the 1961 Act from the assessment year 2007-08. However, the deduction shall not be available after the assessment year 2009-10.
- (v) Undertaking "E" is set up and starts producing computer software prior to March 31, 1994. It gets approval as a 100 per cent. EOU in the financial year 2004-05 relevant to the assessment year 2005-06. Undertaking "E" shall not be eligible for deduction under section 10B of the 1961 Act as the period of deduction of ten years expires prior to the assessment year 2005-06.

Reference may be made to *CIT v. Mahavir Spinning Mills Ltd.*, (2008) 303 ITR 353 (Punj); *CIT v. Enable Exports (P.) Ltd.*, (2012) 17 taxmann.com 182 (Del); *Super Auto Forge Ltd. v. Addl. CIT*, (2014) 365 ITR 318, 328 (Mad).

Eligibility criteria for eligible undertakings.—The benefit of section 10B of the 1961 Act is available to a 100% EOU which fulfils all the following conditions laid down in **section 10B(2)** of the 1961 Act, namely:—

- (i) it manufactures or produces any articles or things or computer software;
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act;
- (iii) it is not formed by the transfer to the new business of machinery or plant previously used for any purpose, subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the **Explanation 1 to section 80-I(2)** of the 1961 Act, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business.

In *CIT v. Sasken Communications Tech Ltd.*, (2012) 347 ITR 362 (Karn), it has been held that the assessee was held entitled to the benefit under section 10B of the 1961 Act for a period of 10 years even though within two years from setting up the unit at Gujarat, it was shifted to Bangalore with the permission of the Government of India and, hence, Assessing Officer was wrong in considering it as a reconstruction of business. Similarly, where assessee transferred its place of existing business to a new place located in STPI area and got approval from authorities, it could not be said that assessee's business was formed by splitting up/reconstruction of business already in existence [*CIT v. S.R.A. Systems Ltd.*, (2021) 431 ITR 294 (Mad)].

Where firm was constituted with personal contribution of partners, some of whom are directors of a company, firm cannot be said to be a division of company [*CIT v. Deco De Trend*, (2014) 360 ITR 1 (Mad)]. A mere reconstitution of the partnership firm can hardly be said to amount to the splitting up, or the reconstruction, of the partnership business which was already in existence [*CIT v. Arts Beauty Exports*, (2013) 357 ITR 276 (Del)].

Where assessee had set up a new unit adjacent to old unit and raised its annual production capacity to 15 lakh tons from previous 2 lakh tons and there was no allegation on assessee of transferring assets from old unit to new unit and new unit was separate and distinct, assessee could not have been denied exemption under section 10B of the 1961 Act [*CIT v. Sociedade De Fomento Industrial (P.) Ltd.*, (2020) 429 ITR 207 (Bom), **SLP dismissed**; *CIT v. Sociedade De Fomento Industrial (P.) Ltd.*, (2022) 135 taxmann.com 355 (SC)]. Where there was no transfer of old plant and machinery to assessee and transfer of employees and customers was only a small percentage of total employees and customers of assessee, it would be entitled to claim deduction under section 10B of the 1961 Act [*Principal CIT v. Jeans Knit P. Ltd.*, (2021) 430 ITR 476 (Karn)].

Where assessee-company, for purpose of producing computer software, had taken on lease from its sister concern 66.66% of site plant and machinery used by such sister concern and further since assessee's sister concern was also a 100% EOU engaged in producing computer software, assessee was not entitled to benefit under section 10B(2) of the 1961 Act [*Stabilix Solutions (P.) Ltd. v. ITO*, (2019) 412 ITR 82 (Ker)].

Sale proceeds of exported items also needed to be received in, or brought into, India in convertible foreign exchange within the stipulated period.—As ordained by **section 10B(3)** of the 1961 Act, section 10B of the 1961 Act applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange,—

- within a period of 6 months from the end of the previous year, or
- within such further period as the competent authority may allow in this behalf.

According to **Explanation 2 to section 10B(3)** of the 1961 Act, the sale proceeds referred to in section 10B(3) of the 1961 Act shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Where assessee had neither brought entire sale proceeds for export in convertible foreign exchange in India nor it had received permission from RBI for opening bank account outside India to receive such outstanding sale proceeds in it, exemption under section 10B of the 1961 Act was to be restricted only to extent such export proceeds were received by assessee in India [*Nuovafil Infotech (P.) Ltd. v. ITO*, (2021) 431 ITR 313 (Mad)].

Reference may also be made to *Metrix Precision Components (P.) Ltd. v. Deputy CIT*, (2020) 121 taxmann.com 85 (Karn).

“Convertible foreign exchange”, defined.—The expression “convertible foreign exchange” has been defined in **clause (ii) of Explanation 2 to section 10B** of the 1961 Act so as to **mean** foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force.

“Competent authority”, defined.—As per **Explanation 1 to section 10B(3)** of the 1961 Act, for the purposes of this section 10B(3), the expression “competent authority” **means**—

- the Reserve Bank of India, or
- such other authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Mandatory furnishing of return of income for claiming deduction.—**The Finance Act, 2006** (21 of 2006) has mandated by **inserting (w. e. f. 1-4-2006) a 4th proviso to section 10B(1)** of the 1961 Act that no deduction under section 10B of the 1961 Act shall be allowed to such an assessee who does not furnish the return of income on or before the due date specified under section 139(1) of the 1961 Act.

With the addition of the above fourth proviso to section 10B(1) of the 1961 Act, the manner of claiming deduction is now time barred under the provisions of the section 139(1) of the 1961 Act and relief cannot be granted after expiry of the time mentioned in section 139(1) of the 1961 Act. Thus, Parliament acted within its power to differentiate between a return of income filed under section 139(1) of the 1961 Act and a belated return filed under section 139(4) of the 1961 Act for the purposes of deductions claimed section 10B(1) of the 1961 Act [*Nath Brothers Exim International Ltd. v. Union of India*, (2017) 394 ITR 577, 592 (Del)].

Report of an accountant must also be furnished.—As mandated by **section 10B(5)** of the 1961 Act, the deduction under section 10B of the 1961 Act shall not be admissible for any assessment year beginning on or after 1-4-2001 [i.e., for and from assessment year 2001-02] unless the assessee furnishes in **Form No. 56G** [as prescribed by **Rule 16E of the 1962 Rules** (operative between 27-9-2000 and 29-7-2021)], along with the return of income, the report of an accountant, as defined in the *Explanation* below section 288(2) of the 1961 Act, certifying that the deduction has been correctly claimed in accordance with the provisions of section 10B of the 1961 Act.

The provisions of section 10B(5) of the 1961 Act is identical to the provisions of section 80-IA(7) as also section 80HHB(3)(ia) of the 1961 Act and, further, also identical to the erstwhile provisions of section 80J(6A) of the 1961 Act. Thus, the provisions are directory in nature and not mandatory [*CIT v. WEB Commerce (India) P. Ltd.*, (2009) 318 ITR 135 (Del), **following** *CIT v. Contimeters Electricals (P.) Ltd.*, (2009) 317 ITR 249 (Del), **SLP dismissed**: (2010) 320 ITR (St.) 20 (SC)]. **However**, in *Discoverture Solutions (India) (P.) Ltd. v. Deputy CIT*, (2023) 455 ITR 151 (Ori), it has been held that exemption could not allowed where assessee did not satisfy mandatory requirement of filing Form No. 56G of the 1962 Rules.

Customs bonding, not a requirement.—From the copy of the notification No. 53/97-customs dated 31-6-1997, that custom-bonding is required only where imports are contemplated for the purposes of manufacture, production, packaging etc. for the purposes of export of goods or services out of India. Thus, custom-bonding of EOU is not a pre-requisite for claiming exemption under section 10B of the 1961 Act [*CIT v. Arts Beauty Exports*, (2013) 357 ITR 276 (Del)].

Quantum of deduction.—The quantum of deduction under section 10B(1) of the 1961 Act is 100% of the ‘eligible profits’ for the ‘tax holiday period’.

However, as provided in the **2nd proviso [inserted (w. e. f. 1-4-2003) by the Finance Act, 2002** (20 of 2002)] to **section 10B(1)** of the 1961 Act, the deduction under section 10B(1) of the 1961 Act shall be limited, for assessment year 2003-04, to 90% of the ‘eligible profits’.

Eligible profits available for deduction.—Under section 10B of the 1961 Act, operative for and from assessment year 2001-02, the profits and gains which are eligible for deduction under section 10B of the 1961 Act are only those profits and gains as are **derived** by an eligible 100% EOU **from** the export of articles or things or computer software.

The language of section 10B of the 1961 Act provides for exemption with respect to ‘any profits and gains’ derived by assessee and same is not confined to ‘profits and gains of business and profession’ [*CIT v. Hycon India Ltd.*: *Hycron India*, (2009) 308 ITR 251 (Raj)].

As ordained by **section 10B(4)** of the 1961 Act [**substituted (w. e. f. 1-4-2001)** by **the Finance Act, 2001** (14 of 2001)], for the purposes of section 10B(1) of the 1961 Act, the **profits derived from export** of articles or things or computer software [as defined] shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover [as defined] in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

Thus, the eligible profits (*i.e.*, export profits) can be arrived at by adopting the following formula:

$$\text{Total profits of the business of the undertaking} \times \frac{\text{Export turnover [as defined]}}{\text{Total turnover (Export + Domestic turnover)}}$$

To take a concrete example:

(i) Total profits of the business of the undertaking = ₹ 20,00,000

(ii) Export turnover = ₹ 72,00,000

(iii) Total turnover = ₹ 90,00,000

In such a case, the eligible profits (*i.e.*, export profits) would work out at

$$₹ 20,00,000 \times \frac{₹ 72,00,000}{₹ 90,00,000} = ₹ 16,00,000$$

Therefore, it is clear that though the assessee may be having more than one undertaking for the purpose of section 10B of the 1961 Act, it is the profit derived from export of articles or things or computer software from the business of the undertaking alone that has to be taken into consideration and such profit is not to be included in the total income of the assessee. It is only after the deduction of the said profits and gains, the income of the assessee has to be computed.

Once an income forms part of business of 100% EOU of assessee, same cannot be excluded from eligible profits for purpose of computing deduction under section 10B of the 1961 Act [*Principal CIT v. Dishman Pharmaceuticals & Chemicals Ltd.*, (2019) 417 ITR 373 (Guj)]. Thus, all the profits and gains of business of 100% EOU including dividend income, profit on sale of fixed assets, profit on sale of investments, excess provision return back, duty drawback and interest income would be entitled for claim of exemption under section 10B of the 1961 Act. Similarly, miscellaneous income received by assessee on refund of CST had to be included for purpose of computing deduction [*CIT v. Flowserve Microfinish Valves (P.) Ltd.*, (2012) 17 taxmann.com 167 (Karn)].

Income from sale of export quota fell under the head business income and to be included while computing profits and gains from business or profession entitled to relief under section 10B of the 1961 Act [*Camiceria Apparels India P. Ltd. v. Asst. CIT*, (2019) 13 ITR-OL 193 (Mad)]. Where assessee-company earned management fee in nature of export services which was incidental to business of export of valves, it would partake character of profit and gain from business and assessee was to be allowed exemption [*CIT v. Oliver Valves India (P.) Ltd.*, (2020) 118 taxmann.com 548 (Mad)].

Where assessee, a manufacturer and exporter of garments, apart from export receipts also received stitching charges from local sales, it was not eligible for exemption under section 10B of the 1961 Act in respect of receipts of stitching charges [*CIT v. First Garments Mfg. Co. India (P.) Ltd.*, (2013) 29 taxmann.com 409 (Mad)].

Clarification in case of on site development of computer software outside India.—Clarificatory provisions have been enacted (**w. e. f. 1-4-2001**) in **Explanation 3** to **section 10B** of the 1961 Act by **the Finance Act, 2001** (14 of 2001). According to that **Explanation 3**, for the removal of doubts, it has been declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

Deemed export profits for assessment year 2001-02.—As provided in the **second proviso** [operative between 1-4-2001 and 31-3-2002] to **section 10B(1)** of the 1961 Act, the profits and gains derived from such domestic

sales of articles or things or computer software as do not exceed 25% of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.

Thus, where assessee's domestic sale had not exceeded 25% of total sales, domestic turnover would form part of export turnover and domestic profit would form part of export profit [*CIT v. Savvy Systems (India) Ltd.*, (2007) 291 ITR 105 (Mad)]. Also see, *CIT v. Sak Soft Ltd.*, (2008) 298 ITR 63 (Mad).

Foreign exchange fluctuation.—Gains derived from fluctuation in foreign exchange rate arises out of export business of assessee held eligible for deduction [*Principal CIT v. Asahi Songwon Colors Ltd.*, (2018) 400 ITR 138 (Guj)].

Interest income.—Interest income received by the assessee from its sister concern on account of advance payment for goods purchased did fall within the expression 'profits and gains' and was exigible for exemption as business income under section 10B of the 1961 Act [*CIT v. Hycon India Ltd.: Hycron India*, (2009) 308 ITR 251 (Raj)].

Assessee-EOU was entitled to claim exemption in respect of interest earned on bank deposits (margin money) kept for opening letters of credit [*Camiceria Apparels India P. Ltd. v. Asst. CIT*, (2019) 13 ITR-OL 193 (Mad)]. Interest on FDRs which were under lien with bank for facilitating letter of credit and bank guarantee facilities would qualify for deduction [*Riviera Home Furnishing v. Addl. CIT*, (2016) 65 taxmann.com 287 (Del)]. Assessee was entitled to claim exemption on interest income earned from inter-corporate loans and deposits lying in EEFC account [*CIT v. Motorola India Electronics (P.) Ltd.*, (2014) 46 taxmann.com 167 (Karn), **affirmed in** *CIT v. Hewlett Packard Global Soft Ltd.*, (2018) 403 ITR 453 (Karn—FB); *Principal CIT v. Rajesh Exports Ltd.*, (2020) 114 taxmann.com 93 (Karn), **SLP granted:** *Principal CIT v. Rajesh Exports Ltd.*, (2020) 114 taxmann.com 94 (SC)]. Also see, *CIT v. Hindustan Gum & Chemicals Ltd.*, (2016) 72 taxmann.com 90 (Cal); *CIT v. Sankhya Technologies (P.) Ltd.*, (2020) 427 ITR 318 (Mad). **However**, interest given by banks in respect of moneys received on behalf of assessee against public issue of shares and interest from temporary ICDs kept with other companies out of proceeds of public issue of shares held not entitled to exemption [*CIT v. Indo Aquatics Ltd.*, (2014) 369 ITR 589, 592 (T&AP)].

Section 10B(4) of the 1961 Act gives a formula for working out the profits from export of articles. Once it is held that interest on delayed payment relating to export is eligible under section 10B of the 1961 Act, thereafter the calculation is to be done as per said section. The decision of the Tribunal allowing only interest relating to export sales under section 10B of the 1961 Act was upheld, however, the Assessing Officer shall also assess the interest received on delayed payments as per the provisions of the said section [*Vardhman Holdings Ltd. v. CIT*, (2020) 425 ITR 253, 259, 260 (Pun)].

"Export turnover", defined.—The definition of the expression "export turnover" has been given in **clause (iii) of Explanation 2 to section 10B** of the 1961 Act so as to **mean** the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into India by the assessee in convertible foreign exchange in accordance with section 10B(3) of the 1961 Act.

However, it **does not include**—

- freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India, or
- expenses, if any, incurred in foreign exchange in providing the technical services outside India.

If the assessee is engaged in the business of providing technical services outside India in connection with the development or production of computer software, then expenses, if any, incurred in foreign exchange in providing technical services outside India is liable to be deducted out of 'export turnover'. The said provision has no application in the case of export out of India of computer software or its transmission from India to a place outside India by any means. The law makes a distinction between technical services rendered in connection with export of computer software and export of technical services for the purpose of development or production of computer software outside India. Thus, foreign currency expenditure incurred for providing software development services outside India cannot be excluded from 'export turnover' for the purpose of computing deduction under section 10B of the 1961 Act [*CIT v. Mphasis Ltd.*, (2016) 74 taxmann.com 274 (Karn), **SLP dismissed:** *CIT v. Mphasis Ltd.*, (2020) 113 taxmann.com 74 (SC)]. Also see, *Mindtree Ltd. v. Asst. CIT*, (2020) 427 ITR 338 (Karn); *CIT v. Zylog Systems Ltd.*, (2020) 429 ITR 88 (Mad).

'Export turnover' and 'total turnover', relation between.—Where unrealized export turnover was excluded from 'export turnover', then same would be excluded from 'total turnover' also for purposes of computing deduction admissible under section 10B of the 1961 Act [*Principal CIT v. Dishman Pharmaceuticals & Chemicals Ltd.*, (2019) 417 ITR 373 (Guj)]. Also see, *CIT v. Mphasis Ltd.*, (2016) 74 taxmann.com 274 (Karn), **SLP dismissed:** *CIT v. Mphasis Ltd.*, (2020) 113 taxmann.com 74 (SC); *CIT v. Covansys (India) (P.) Ltd.*, (2021) 127 taxmann.com 881 (Mad).

Where trading transactions are not shown at market value.—Section 10B(7) read with section 80-IA(8) of the 1961 Act provides that where the goods held for the purposes of the business of the eligible undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible undertaking at the market value, the profits and gains of the business of the undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—Section 10B(7) read with section 80-IA(10) of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible undertaking.

Apportionment of expenses.—Applying the provisions of section 10B(7) read with sections 80-IB(8) & 80-IB(10) of the 1961 Act, it has been held that since the expenditure incurred by the HO was common expenditure for eligible and non-eligible units, therefore, the same needed to be apportioned to determine the actual profits of both the types of units [*Vardhman Holdings Ltd. v. CIT*, (2020) 425 ITR 253 (Punjab)]. Doctrine of proportionality does not apply in case of common expenses incurred by head office for purpose of maintaining units [*CIT v. Hindustan Lever Ltd.*, (2014) 42 taxmann.com 132 (Mad)].

Deduction under section 10B of 1961 Act, available at which stage of computation.—In this regard, the CBDT *vide Circular/Instruction No. 7/(DV) of 2013, dated 16-7-2013*: (2013) 356 ITR (St.) 7-10 has clarified that the deduction is to be allowed from the total income of the assessee. The term “total income” has been defined in section 2(45) of the Income-tax Act, 1961 and it means the total amount of income referred to in section 5 of the 1961 Act, computed in the manner laid down in the Income-tax Act. The income computed under various heads of income in accordance with the provisions of Chapter IV of the Income-tax Act shall be aggregated in accordance with the provisions of Chapter VI of the Income-tax Act, 1961. This means that first the income/loss from various sources, *i.e.*, eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the 1961 Act. Thereafter, the income from one head is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the 1961 Act. If after giving effect to the provisions of sections 70 and 71 of the 1961 Act, there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the 1961 Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or section 10A, 10B, etc., of the 1961 Act, the same shall be allowed in computing the total income of the assessee. If after aggregation of income in accordance with the provisions of sections 70 and 71 of the 1961 Act, the resultant amount is a loss (pertaining to the assessment year 2001-02 and any subsequent year) from eligible unit, it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the 1961 Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the 1961 Act.

However, in view of *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274, 290 (SC) = (2017) 291 CTR (SC) 1, the stage of deduction would be while computing the GTI of the eligible undertaking under Chapter IV of the 1961 Act and not at the stage of computation of the total income under Chapter VI. Accordingly, deduction under section 10B of the 1961 Act was to be excluded first from profits of year before set-off brought forward unabsorbed depreciation pertaining to export oriented unit [*Principal CIT v. SKM Engg. Products Export India Ltd.*, (2022) 139 taxmann.com 134 (Mad), **SLP dismissed**: *Principal CIT v. SKM Engg. Products Export India Ltd.*, (2022) 139 taxmann.com 135 (SC)].

Set-off of losses.—Loss sustained by an export oriented unit has been held to be set off against normal business income or profits of other units under the same head [*Hindustan Unilever Ltd. v. Deputy CIT*, (2010) 325 ITR 102 (Bom); *CIT v. Galaxy Surfactants Ltd.*, (2012) 343 ITR 108 (Bom)]. Also see, *Karle International (P.) Ltd. v. Asst. CIT*, (2021) 430 ITR 74 (Karn), **SLP dismissed**: *Asst. CIT v. Karle International (P.) Ltd.*, (2021) 130 taxmann.com 453 (SC).

Unabsorbed depreciation of other undertakings cannot be set off while ascertaining the profits of an undertaking [*CIT v. Cheslind Textiles Ltd.*, (2013) 354 ITR 29 (Karn)]. Brought forward unabsorbed depreciation and losses of the unit the income of which is not eligible for deduction under section 10B cannot be set off against the current profit of the eligible unit for computing the deduction under section 10B of the 1961 Act [*CIT v. Ganesh Polychem Ltd.*, (2020) 120 taxmann.com 270 (Bom), **SLP dismissed**: *CIT v. Ganesh Polychem Ltd.*, (2020) 120 taxmann.com 271 (SC)].

Tax holiday period.—The 100% EOU shall be entitled to the deduction under **section 10B(1)** of the 1961 Act for a period of 10 consecutive years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software.

Thus, the period for which the assessee would be entitled to claim deductions of such profits is not eternal. It is for a fixed period of 10 consecutive years in which the undertaking begins to manufacture or produce articles or things or computer software depending upon the activity of the assessee. It would emerge that an assessee would be entitled to claim deduction of such profits and gains derived by it and it would be entitled to claim such deductions for a period of 10 consecutive years from the date of commencement of its manufacture as envisaged in the section itself. Thus, year of commencement of manufacture would be the criteria and nothing else.

The starting point of limitation for claiming the benefit flowing from section 10B of the 1961 Act would commence from the year of manufacture or production of the undertaking and if such condition is not satisfied in the year of commencement of production, it would not be able to claim such deduction in the subsequent years, unless the said initial test on the date of the starting point of limitation has been satisfied [*Sami Labs Ltd. v. Asst. CIT*, (2011) 334 ITR 157 (Karn)].

Exception(s) to tax holiday period.—The **first proviso** to **section 10B(1)** of the 1961 Act carves out an exception and contemplates a situation where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of section 10B of the 1961 Act as it stood immediately before its substitution (**w. e. f. 1-4-2001**) by the Finance Act, 2000 (10 of 2000). In such a situation, such undertaking shall be entitled to deduction referred to in section 10B(1) of the 1961 Act only for the **unexpired period** of the aforesaid 10 consecutive assessment years.

Tax holiday period to be curtailed on transfer of the ownership or the beneficial interest in the undertaking.—As mandated by **section 10B(9)** of the 1961 Act [operative between 1-4-2001 and 31-3-2004], where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under section 10B(1) of the 1961 Act shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years.

Thus, where an undertaking, which is eligible for deduction under section 10B(1) of the 1961 Act for assessment years 2001-02 to 2008-09, transfers its ownership during the previous year 2005-06, deduction under section 10B(1) of the 1961 Act shall not be allowed to the assessee for the assessment years 2006-07 to 2008-09.

Tax holiday period to be continued in case of succession of a firm or a sole proprietary concern by a company in certain cases.—**Section 10B(9A)** of the 1961 Act [operative between 1-4-2003 and 31-3-2004] overrides the provisions of section 10B(9) of the 1961 Act by engrafting a *non obstante* clause “Notwithstanding anything contained in sub-section (9)”. That section 10B(9A) of the 1961 Act contemplates a situation where, as a result of reorganization of business, a firm or a sole proprietary concern is succeeded by a company **and** the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company.

In such a situation, the deduction under section 10B(1) of the 1961 Act shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganization had not taken place.

It is provided in **clause (a) of the proviso to section 10B(9A)** of the 1961 Act that, in order to avail the provisions of section 10B(9A) of the 1961 Act, in the case of a firm,—

- (i) the aggregate of the shareholding in the company of the partners of the firm is not less than 51% of the total voting power in the company; and
- (ii) their shareholding continues to be as such for the period for which the company is eligible for deduction under section 10B of the 1961 Act.

On the other hand, in order to avail the provisions of section 10B(9A), **clause (b) of the proviso to section 10B(9A)** of the 1961 Act mandates that in the case of a sole proprietary concern,—

- (i) the shareholding of the sole proprietor in the company is not less than 51% of the total voting power in the company; and
- (ii) his shareholding continues to remain as such for the period for which the company is eligible for deduction under section 10B of the 1961 Act.

Change in the shareholding of the company to be regarded as transfer in certain cases.—**Explanation 1** [operative between 1-4-2001 and 31-3-2004] to **section 10B** of the 1961 Act enacts certain deeming provisions for the purposes of section 10B of the 1961 Act and contemplates a situation, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than 51% of the voting power are not beneficially held by persons who held the shares of the company carrying not less than 51 per cent. of the voting power on the last day of the year in which the undertaking was set up.

In such a situation, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking.

However, the **proviso to Explanation 1** carves out an exception and enacts that nothing contained in *Explanation 1* to section 10B of the 1961 Act shall apply to any change in the shareholding of the company as a result of—

- (a) its becoming a company in which the public are substantially interested [as defined in section 2(18) of the 1961 Act]; or
- (b) disinvestment of its equity shares by any venture capital company or venture capital fund.

Although the expressions ‘venture capital company’ and ‘venture capital fund’ have not been defined in section 2 of the 1961 Act which coins certain definitions for the purposes of the 1961 Act, these expressions have been defined, *inter alia*, in clauses (a) and (b) of *Explanation 1* to section 10(23FB) of the 1961 Act for the purposes of that section only. Inspiration in that regard may be taken from such definitions.

Deduction under section 10B allowable, illustrations.—(1) Since there being no material placed to contend that the assessee had violated the conditions of licence thereby disentitling the assessee to the benefit of deduction under section 10B of the 1961 Act, the assessee held entitled to the exemption under section 10B of the 1961 Act for all the four assessment years in question [*CIT v. Relco P. Ltd.*, (2013) 359 ITR 291 (Mad)].

(2) Any type of typographical mistake which crept during e-filing of return being a technical mistake must not come in the way of allowing any type of exemption under section 10B of the 1961 Act and, as such, for the assessment year 2008-09, the assessee in question held exigible for exemption [*CIT v. Rajasthan Fasteners P. Ltd.*, (2014) 363 ITR 271 (Raj)].

Where assessee inadvertently omitted to make claim for deduction under section 10B of the 1961 Act in respect of two 100% EOUs, however, all necessary facts for claiming deduction under section 10B of the 1961 Act were already on record, Commissioner (Appeals) in exercise of his plenary/co-terminus powers, as well as Tribunal, ought to have entertained claim [*Sesa Goa Ltd. v. Addl. CIT*, (2021) 430 ITR 114 (Bom)].

(3) Where assessee-BPO, after recruiting substantial and large number of employees, kept them on payroll and also paid all statutory benefits, business of assessee was clearly set up and deduction claimed by assessee under section 10B of the 1961 Act was to be allowed [*Omniglobe Information Tech India (P.) Ltd. v. CIT*, (2014) 369 ITR 1 (Del)].

(4) Deduction could not be denied merely because assessee had substantial unabsorbed depreciation and business losses of earlier years to be set off against profits of its unit [*CIT v. BEHR India Ltd.*, (2016) 389 ITR 459 (Bom), **SLP granted:** *CIT v. BEHR India Ltd.*, (2016) 74 taxmann.com 171 (SC)].

(5) Where assessee had two units in India, out of which one was EOU, even though gross total income of assessee was in negative, yet exemption under section 10B of the 1961 Act could be granted separately for its eligible unit [*Swarovski India Pvt. Ltd. v. Deputy CIT*, (2017) 397 ITR 558, 571 (Del)].

(6) Mere processing of iron ore in a plant and machinery located outside customs bonded area would not disentitle assessee from claiming deduction under section 10B of the 1961 Act where iron ore was excavated from mining area belonging to an EOU [*Principal CIT v. Lakshminarayana Mining Co.*, (2018) 404 ITR 522 (Karn)].

No double deduction possible.—Section 80-IC(5) of the 1961 Act provides that, in computing the total income of the assessee, no deduction is to be allowed under any other section or section 10B of the 1961 Act, *inter alia*, in relation to the profits and gains of the undertaking. Therefore, it is clear that simultaneously claiming the benefit of deduction under section 80-IC and section 10B of the 1961 Act is not permitted [*CIT v. Windlass Steel Craft*, (2018) 12 ITR-OL 252 (Uttarakhand)].

However, in *Biocon Ltd. v. Deputy CIT*, (2021) 133 taxmann.com 149 (Karn), **SLP notice issued:** *Deputy CIT v. Biocon Ltd.*, (2021) 133 taxmann.com 150 (SC), it has been held that assessee would be entitled to claim deduction under section 35(2AB) of the 1961 Act in respect of expenses of its unit which was entitled for deduction under section 10B of the 1961 Act. **On the other hand**, in *CIT v. Bosch Ltd.*, (2021) 125 taxmann.com 99 (Karn), it has been held that where assessee was able to demonstrate that expenditure on R&D claimed under section 35(2AB) of the 1961 Act had no connection with its 100% EOUs, no disallowance could be made under section 35 read with section 10B of the 1961 Act.

Special provisions enacted in case of transfer of eligible undertaking under a scheme of amalgamation or demerger.—Section 10B(7A) of the 1961 Act (inserted w. e. f. 1-4-2004) contemplates a situation where any undertaking of an Indian company [as defined in section 2(26) of the 1961 Act] which is entitled to the deduction under section 10B of the 1961 Act is transferred, before the expiry of the period specified in section 10B of the 1961 Act, to another Indian company in a scheme of *amalgamation* [as defined in section 2(1B) of the 1961 Act] or *demerger* [as defined in section 2(19AA) of the 1961 Act].

In such a situation,—

- (i) no deduction shall be admissible under section 10B of the 1961 Act to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and
- (ii) the provisions of section 10B of the 1961 Act shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

Section 10B(7A) of the 1961 Act is an enabling provision meant for continuity of benefit under section 10B of the 1961 Act even after change in ownership of the industrial undertaking to the successor [*MKU (Armours) P. Ltd. v. CIT*, (2015) 376 ITR 514, 529 (All) = (2015) 279 CTR (All) 504]. Where there was merger of subsidiary company with assessee (holding company), and assets stood transferred to amalgamated company and evidently, export business done by assessee was not a business formed by splitting up or reconstruction of a business already in existence, assessee was entitled to get benefit under section 10B of the 1961 Act [*CIT v. Shri Renuga Textiles Mills Ltd.*, (2014) 366 ITR 649, 655 (Mad)]. As long as the undertakings remained eligible for deduction under section 10B of the 1961 Act, deduction could not be denied merely on the ground that there had been a merger of the firms which owned the undertakings [*CIT v. Trident Minerals*, (2019) 413 ITR 461 (Karn), **SLP granted**: *CIT v. Trident Minerals (100% EOU)*, (2019) 108 taxmann.com 334 (SC)].

Matter remanded.—Merely because the assessee had been permitted to establish a new industrial undertaking for the manufacture of computer software as 100% EOU under the STP Scheme was itself not enough to record a finding that the said unit had in fact been established and was entitled to claim the exemption as applicable under section 10B of the 1961 Act. Therefore, the matter in respect of the claim made by the assessee under section 10B of the 1961 Act required to be remitted back to the Assessing Officer for examination afresh [*CIT v. Modi Xerox*, (2012) 344 ITR 435 (Del)].

Reference may also be made to *CIT v. Arts Beauty Exports*, (2013) 357 ITR 276 (Del); *CIT v. J. E. Enterprises P. Ltd.*, (2014) 366 ITR 571, 574 (Cal) = (2014) 272 CTR (Cal) 102; *Philips Foods India Pvt. Ltd. v. Asst. CIT*, (2021) 430 ITR 199 (Mad).

Reopening of assessment.—The finding of the Tribunal in so far as it related to the claim for exemption from the taxability under section 10B of the 1961 Act in reassessment proceedings was to be restricted only to the extent of escaped income and not the entire income as claimed by assessee. Thus, where re-assessment proceedings were initiated in respect of escaped assessment, i.e., the claim made towards sale proceeds in convertible foreign exchange which had not been received, during the re-assessment the assessee could not be allowed to claim that the entire deduction claimed under section 80HHC of the 1961 Act was exempted under section 10B of the 1961 Act [*CIT v. Sangeetha Granites Ltd.*, (2010) 326 ITR 324 (Karn)].

In order to determine admissibility of assessee's claim under section 10B of the 1961 Act, date of commencement of manufacture or production could be ascertained from relevant documents such as certificate of registration by competent authority. Mere wrong mentioning of said date in Form No. 56G of the 1962 Rules filed in support of claim of deduction, could not be a ground to reopen assessment [*MBI Kits International v. ITO*, (2018) 408 ITR 1 (Mad), **relying on** *ITO v. Techspan India P. Ltd.*, (2018) 404 ITR 10 (SC)].

When the Assessing Officer had, at the time of original assessment, scrutinised the claim to deduction under section 10B and had chosen not to make any disallowance, he could not reopen such assessment in order to examine another facet of the same claim [*QX KPO Services Pvt. Ltd. v. Deputy CIT*, (2019) 414 ITR 429 (Guj), **SLP dismissed**: *Deputy CIT v. QX KPO Services (P.) Ltd.*, (2018) 99 taxmann.com 301 (SC)].

Where assessee did not realize sale proceeds of exported goods within stipulated period, reopening of assessment on issue of section 10B deduction was held to be valid [*Suntec Business Solutions P. Ltd. v. Union of India*, (2013) 354 ITR 657 (Ker)].

Reference may also be made to *Western Outdoor Interactive P. Ltd. v. A.K. Phute, ITO*, (2006) 286 ITR 620 (Bom); *Siemens Information System Ltd. v. Asst. CIT*, (2007) 295 ITR 333 (Bom).

Follow-up consequences in subsequent assessment years.—Section 10B(6) of the 1961 Act opens with a *non obstante* clause “Notwithstanding anything contained in any other provision of this Act”, thus, overriding any other provision of the 1961 Act and enacts certain special provisions for computing the total income of the assessee—

- of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or
- of any previous year, relevant to any subsequent assessment year.

By virtue of section 10B(6)(i) of the 1961 Act, it shall be presumed that full allowance under the following provisions had been given effect to for any of the relevant assessment years ending before 1-4-2001 even though not actually shown in the computation:—

- (a) section 32 of the 1961 Act – depreciation;
- (b) section 32A of the 1961 Act – investment allowance;
- (c) section 33 of the 1961 Act – development rebate;
- (d) section 35 of the 1961 Act – expenditure on scientific research; and
- (e) section 36(1)(ix) of the 1961 Act – expenditure by a company for promoting family planning amongst its employees.

Further, the following provisions shall not be given effect to:—

- (a) section 32(2) of the 1961 Act – unabsorbed depreciation allowance;
- (b) section 32A(3)(ii) of the 1961 Act – unabsorbed investment allowance;
- (c) section 33(2)(ii) of the 1961 Act – unabsorbed development rebate;
- (d) section 35(4) of the 1961 Act – unabsorbed capital expenditure on scientific research; and
- (e) section 36(1)(ix), 2nd proviso of the 1961 Act – unabsorbed capital expenditure on family planning.

Section 10B(6)(ii) of the 1961 Act further provides that unabsorbed business losses [s. 72(1) of the 1961 Act] and/or unabsorbed loss under the head “Capital gains” [s. 74(1) or s. 74(3) of the 1961 Act], relating to the business of the eligible undertaking for any of the relevant assessment years ending before 1-4-2001 shall not be allowed to be carried forward or set off.

Section 10B(6)(iii) of the 1961 Act ensures that if benefit under section 10B of the 1961 Act has been availed of for any or more year(s) comprised in the tax holiday period, then, in such cases, the taxpayer shall not be entitled to claim straight deductions under sections 80HH, 80HHA, 80-I, 80-IA and/or 80-IB of the 1961 Act, in relation to the profit and gains of the eligible undertaking.

The fact that above provision does not refer to section 80HHC of the 1961 Act indicates strongly that the Legislature did not intend to deny an assessee, who had availed of the benefit of section 10B of the 1961 Act, a deduction under section 80HHC of the 1961 Act [*Mahavir Spinning Mills Ltd. v. CIT*, (2017) 391 ITR 290, 301 (Punj)].

Section 10B(6)(iv) of the 1961 Act further ensures that for computing depreciation allowance under section 32 of the 1961 Act, the “written down value” of any depreciable asset of the eligible undertaking shall be ascertained as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

The Revenue would not be justified in treating the assets of an export-oriented unit in isolation on the expiry of the tax holiday period, particularly when section 10B(6)(iv) of the 1961 Act recognizes the deemed grant of the depreciation allowance during the currency of the tax holiday which means that at the expiry of the period of five years, the written down value of the plant and machinery continues to be available for the business of the assessee which goes for normal assessment under various provisions of the Act [*S. Muthurajan v. Deputy CIT*, (2011) 339 ITR 301 (Mad)].

“*Relevant assessment years*”, defined.—**Clause (v) of Explanation 2 to section 10B** of the 1961 Act coins an exhaustive definition of the expression “relevant assessment years” so as to **mean** any assessment year falling within a period of 10 consecutive assessment years referred to in this section 10B of the 1961 Act.

Option not to avail of the tax holiday under section 10B of 1961 Act.—Section 10B of the 1961 Act appears to grant benefit to the taxpayer. At the same time, it takes away the right to claim benefits under some other provisions of the Act. The taxpayer has to assess the totality of impacts and judge for himself whether availing of the benefits under section 10B of the 1961 Act would be of advantage to him.

Section 10B(8) of the 1961 Act, which has an overriding effect, gives an option to the taxpayer to intimate his Assessing Officer, by a declaration in writing before the expiry of the due date for filing his return, that provisions of section 10B of the 1961 Act may not be made applicable to him. If he does so, the provisions of section 10B of the 1961 Act shall have no application in his case.

Under section 10B(8) of the 1961 Act, it is open to the assessee to give declaration and the said section cannot dilute the requirement of section 10B(1) of the 1961 Act. In other words, section 10B(8) of the 1961 Act is conditioned upon the assessee being entitled to the deduction under section 10B of the 1961 Act and also it is subject to the right of the assessee to give a declaration and he can always opt out of the benefit of section 10B of the 1961 Act [*CIT v. Windlass Steel Craft*, (2018) 12 ITR-OL 252 (Uttarakhand)]. It was also open to the assessee, notwithstanding the fact that the assessee had exercised the option to have section 10B of the 1961 Act made applicable, to withdraw that option, provided such withdrawal was made on or before the due date for filing the return [*CIT v. Tamil Nadu Jai Bharath Mills Ltd.*, (2006) 287 ITR 512 (Mad)].

Where assessee claimed benefit under section 10B(8) of the 1961 Act by furnishing declaration in revised return much after due date prescribed under section 139(1) of the 1961 Act, same was to be denied as requirement of furnishing declaration before AO before due date of filing original return under section 139(1) of the 1961 Act was a mandatory condition not directory [*Principal CIT v. Wipro Ltd.*, (2022) 446 ITR 1 (SC), **reversing** *Principal CIT v. Wipro Ltd.*, (2021) 123 taxmann.com 393 (Karn) and **affirmed in** *Wipro Ltd. v. Principal CIT*, (2022) 142 taxmann.com 562 (SC)].

Revised return for withdrawing exemption claimed in original return.—By validly filing a revised return, the assessee was within its right to withdraw exemption under section 10B of the 1961 Act which it had earlier claimed in the original return [*CIT v. Rana Polycot Ltd.*, (2012) 347 ITR 466 (Punj)].

No deduction to be allowed under section 10B of 1961 Act for and from assessment year 2012-13.—As provided in the 3rd proviso to section 10B(1) of the 1961 Act, no deduction under section 10B of the 1961 Act shall be allowed to any undertaking for the assessment year beginning on 1-4-2012 and subsequent years.

Thus, the deduction under section 10B of the 1961 Act can be availed of by an eligible undertaking up to and including assessment year 2011-12, on fulfilment of the requisite conditions in that regard.

Omitted/Phased out provisions of sections 10BA & 10BB of the 1961 Act

¹[S. 10BA. Special provisions in respect of export of certain articles or things.—(1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, deduction under section 10A or section 10B has been claimed, the undertaking shall not be entitled to the deduction under this section:

Provided further that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010, and subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions, namely:—

- (a) it manufactures or produces the eligible articles or things without the use of imported raw materials;
- (b) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (c) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of this clause as they apply for the purposes of clause (ii) of sub-section (2) of that section;

- (d) ninety per cent or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things;
- (e) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation.—For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

(4) For the purposes of sub-section (1), the profits derived from export out of India of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under sub-section (1) shall not 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 section.

(6) Notwithstanding anything contained in any other provision of this Act, where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation.—For the purposes of this section,—

- (a) “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange

1. Section 10BA has been inserted by the Taxation Laws (Amendment) Act, 2003 (54 of 2003), s. 3 (w. e. f. 1-4-2004).

Management Act, 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force;

- (b) “eligible articles or things” means all hand-made articles or things, which are of artistic value and which requires the use of wood as the main raw material;
- (c) “export turnover” means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;
- (d) “export out of India” shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance of any customs station as defined in the Customs Act, 1962 (52 of 1962).]

Introduction under 1961 Act.—*The Taxation Laws (Amendment) Act, 2003.*—By the **Taxation Laws (Amendment) Act, 2003** (54 of 2003), **section 10BA** has been inserted (w. e. f. 1-4-2004).

100% deduction in respect of profits derived from export of wood based handicraft items.—**Section 10BA(1)** of the 1961 Act allows a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things from the total income of the assessee subject to the provisions of section 10BA of the 1961 Act.

“Export out of India”, defined.—By virtue of **clause (d) of the Explanation to section 10BA** of the 1961 Act, the expression ‘export out of India’ has been defined so as **not to include** any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance of any customs station as defined in the Customs Act, 1962 (52 of 1962).

“Eligible articles or things”, defined.—The expression “eligible articles or things” has been defined, for the purposes of section 10BA of the 1961 Act, in **clause (b) of the Explanation to section 10BA** of the 1961 Act so as to **mean** all hand-made articles or things, which are of artistic value and which requires the use of wood as the main raw material.

Process of modification and beautification of semi-furnished furniture for export falls within the ambit of ‘manufacturing process’. Therefore, assessee entitled to deduction under section 10BA of the 1961 Act [*CIT v. Manglam Arts*, (2017) 398 ITR 594, 603 (Raj)].

Eligibility criteria for eligible undertakings.—The benefit of section 10BA of the 1961 Act is available to an undertaking which fulfils all the following conditions laid down in **section 10BA(2)** of the 1961 Act, namely:—

- (i) it manufactures or produces the eligible articles or things without the use of imported raw materials.
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act.
- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose, subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the **Explanation 1 to section 80-I(2)** of the 1961 Act, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business.
- (iv) 90% or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things.
- (v) It employs 20 or more workers during the previous year in the process of manufacture or production.

Where decision of Tribunal in earlier years was that the assessee was engaged in manufacturing activity and, therefore, entitled to deduction under section 80-IB of the 1961 Act had been accepted by the revenue, allowability of deduction under section 10BA of the 1961 Act on the basis that assessee satisfied condition given in (v) above employing 20 or more workers during relevant previous year could not be assailed by revenue [*CIT v. Arts & Crafts Exports*, (2012) 22 taxmann.com 53 (Bom)].

Sale proceeds of exported articles or things also needed to be received in, or brought into, India in convertible foreign exchange within the stipulated period.—As ordained by **section 10BA(3)** of the 1961 Act, section 10BA of the 1961 Act applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange,—

- within a period of 6 months from the end of the previous year, or
- within such further period as the competent authority may allow in this behalf.

“Convertible foreign exchange”, defined.—The expression “convertible foreign exchange” has been defined in **clause (a) of Explanation to section 10BA** of the 1961 Act so as to **mean** foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force.

“Competent authority”, defined.—As per **Explanation to section 10BA(3)** of the 1961 Act, for the purposes of this section 10BA(3) of the 1961 Act, the expression “competent authority” **means**—

- the Reserve Bank of India, or
- such other authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Report of an accountant must be furnished.—As mandated by **section 10BA(5)** of the 1961 Act, the deduction under section 10BA of the 1961 Act shall not be admissible unless the assessee furnishes in **Form No. 56H** [as prescribed by **Rule 16F of the 1962 Rules** (operative between 31-3-2004 and 29-7-2021)], along with the return of income, the report of an accountant, as defined in the *Explanation* below section 288(2) of the 1961 Act, certifying that the deduction has been correctly claimed in accordance with the provisions of section 10BA of the 1961 Act.

Eligible profits available for deduction.—Under section 10BA of the 1961 Act, the profits and gains which are eligible for deduction are only those profits and gains as are **derived** by an undertaking **from** the export of the eligible articles or things.

DEPB is a profit derived from export business [*CIT v. Arts & Crafts Exports*, (2012) 22 taxmann.com 53 (Bom)].

As mandated by **section 10BA(4)** of the 1961 Act, for the purposes of section 10BA(1) of the 1961 Act, the **profits derived from export** of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover [as defined] in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

Thus, the eligible profits (*i.e.*, export profits) can be arrived at by adopting the following formula:

Total profits of the business of the undertaking

$$\times \frac{\text{Export turnover [as defined]}}{\text{Total turnover (Export + Domestic turnover)}}$$

To take a concrete example:

- (i) Total profits of the business of the undertaking = ₹ 30,00,000
- (ii) Export turnover = ₹ 80,00,000
- (iii) Total turnover = ₹ 1,00,00,000

In such a case, the eligible profits (*i.e.*, export profits) would work out at

$$₹ 30,00,000 \times \frac{₹ 80,00,000}{₹ 1,00,00,000} = ₹ 24,00,000$$

“Export turnover”, defined.—The definition of the expression “export turnover” has been given in **clause (c) of Explanation to section 10BA** of the 1961 Act so as to **mean** the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into India by the assessee in convertible foreign exchange in accordance with section 10BA(3) of the 1961 Act.

However, it **does not include** freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India.

Where trading transactions are not shown at market value.—**Section 10BA(7)** read with **section 80-IA(8)** of the 1961 Act provides that where the goods held for the purposes of the business of the eligible undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible undertaking at the market value, the profits and gains of the business of the undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—Section 10BA(7) read with section 80-IA(10) of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible undertaking.

Deduction under section 10BA of 1961 Act, available at which stage of computation.—In this regard, the CBDT *vide Circular/Instruction No. 7/(DV) of 2013, dated 16-7-2013*: (2013) 356 ITR (St.) 7-10 has clarified that the deduction is to be allowed from the total income of the assessee. The term “total income” has been defined in section 2(45) of the Income-tax Act and it means the total amount of income referred to in section 5, computed in the manner laid down in the Income-tax Act. The income computed under various heads of income in accordance with the provisions of Chapter IV of the Income-tax Act shall be aggregated in accordance with the provisions of Chapter VI of the Income-tax Act, 1961. This means that first the income/loss from various sources, *i.e.*, eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act. Thereafter, the income from one ahead is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act, there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or section 10A, 10B, etc., of the Act, the same shall be allowed in computing the total income of the assessee. If after aggregation of income in accordance with the provisions of sections 70 and 71 of the Act, the resultant amount is a loss (pertaining to the assessment year 2001-02 and any subsequent year) from eligible unit, it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.

However, it is to be noted that in view of *CIT v. Yokogawa India Ltd.*, (2017) 391 ITR 274, 290 (SC) = (2017) 291 CTR (SC) 1, the stage of deduction, under section 10BA, would be, like under sections 10A and 10B of the 1961 Act, while computing the GTI of the eligible undertaking under Chapter IV of the 1961 Act and not at the stage of computation of the total income under Chapter VI.

No double deduction possible.—As per 1st proviso to section 10BA(1) of the 1961 Act, where a deduction under section 10A or 10B of the 1961 Act has been claimed in computing the total income of the undertaking for any assessment year, then such undertaking shall not be entitled to deduction under section 10BA of the 1961 Act.

As a necessary corollary, as per section 10BA(6) of the 1961 Act, which overrides any other provision of the 1961 Act, where a deduction is allowed under section 10BA of the 1961 Act in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

No deduction to be allowed under section 10BA of 1961 Act for and from assessment year 2010-11.—As provided in the 2nd proviso to section 10BA(1) of the 1961 Act, no deduction under section 10BA of the 1961 Act shall be allowed to any undertaking for the assessment year beginning on 1-4-2010 and subsequent years.

Thus, the deduction under section 10BA of the 1961 Act can be availed of by an eligible undertaking up to and including assessment year 2009-10, on fulfilment of the requisite conditions in that regard.

²[**S. 10BB. Meaning of computer programmes in certain cases.**—The profits and gains derived by an undertaking from the production of computer programmes under section 10B, as it stood prior to its substitution by section 7 of the Finance Act, 2000 (10 of 2000), shall be construed as if for the words “computer programmes”, the words “computer programmes or processing or management of electronic data” had been substituted in that section.]

Introduction under 1961 Act.—*The Finance Act, 2001.*—By the Finance Act, 2001 (14 of 2001), section 10BB has been inserted (w. r. e. f. 1-4-1994).

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 14 of 2001, dated 9-11-2001*, as follows:—

‘22. Clarification regarding the meaning of computer programmes in certain cases.—22.1 A new section 10BB has been inserted so as to clarify the meaning of computer programme in certain cases under section 10B as it stood prior to its substitution by section 7 of the Finance Act, 2000 (10 of 2000). It has been

2. Section 10BB has been inserted by the Finance Act, 2001 (14 of 2001), s. 8 (w. r. e. f. 1-4-1994).

clarified that where an undertaking derived profits and gains from the production of computer programmes these shall include profits and gains from processing or management of electronic data.

22.2 These amendments will take effect from 1-4-1994, and will, accordingly, apply in relation to the assessment year 1994-95 and subsequent years. [*Section 10BB*].

“Computer programmes”, meaning of.—This definition was relevant for the provisions of the then section 10B of the 1961 Act, operative up to assessment year 2000-01.

LexisNexis

Omitted/Phased out provisions of section 10C of the 1961 Act

¹[S. 10C. Special provision in respect of certain industrial undertakings in North-Eastern Region.—

(1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking, which has begun or begins to manufacture or produce any article or thing on or after the 1st day of April, 1998, in any Integrated Infrastructure Development Centre or Industrial Growth Centre located in the North-Eastern Region (hereafter in this section referred to as the industrial undertaking) shall not be included in the total income of the assessee.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:—

(i) it is not formed by the splitting up, or the reconstruction of a business already in existence:

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of any previous year relevant to any subsequent assessment year,—

(i) section 32, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and, accordingly, sub-section (2) of section 32, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such deduction;

(ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3)² of section 74, in so far as such loss relates to the business of the industrial undertaking, shall be carried forward or set-off where such loss relates to any of the relevant assessment years;

(iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB or section 80JJA in relation to the profits and gains of the industrial undertakings; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-IA or section 80-IB, as the case may be.

(6) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee before the due date for furnishing the return of his income under sub-section (1) of section 139, furnishes to

1. Section 10C has been inserted by the Finance Act, 1999 (27 of 1999), s. 7 (w. r. e. f. 1-4-1999).

2. Now section 74(3) has been omitted w. e. f. 1-4-2003 by the Finance Act, 2002 (20 of 2002).

the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him in any of the relevant assessment years:

³[*Provided* that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2004, and subsequent years.]

Explanation.—For the purposes of this section,—

- (i) “Integrated Infrastructure Development Centre” means such centres located in the States of the North-Eastern Region, which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;
- (ii) “Industrial Growth Centre” means such centres located in the States of the North-Eastern Region, which the Central Government may, by notification in the Official Gazette, specify for the purposes of this section;
- (iii) “North-Eastern Region” means the region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;
- (iv) “relevant assessment years” means the ten consecutive years beginning with the year in which the industrial undertaking begins to manufacture or produce articles or things.]

Introduction under 1961 Act.—*The Finance Act, 1999.*—By the **Finance Act, 1999** (27 of 1999), **section 10C** has been **inserted (w. r. e. f. 1-4-1999)**.

The scope and effect of the above insertion have been elaborated in the following portion of the *Departmental Circular No. 779, dated 14-9-1999*, as follows:—

‘14. Insertion of a new provision providing exemptions to industries set-up in the North Eastern Region.—

14.1 A new section 10C has been inserted with a view to provide ten years tax holiday to industrial undertakings set-up in the North Eastern Region on or after 1-4-1998, in the Integrated Infrastructure Development Centres and Industrial Growth Centres. These centres are to be notified by the Central Government.

14.2 In order to avail of the exemption under this provision, following conditions are to be satisfied:—

- (a) The industrial undertaking should not be formed by the splitting up or the reconstruction of a business already in existence.
- (b) Such an undertaking should not be formed by the transfer to a new business of machinery or plant previously used for any purpose.

14.3 For the assessment year(s) succeeding the last assessment year for which the exemption is claimed under this section, deduction under section 32 and the expenditures under sections 35 and 36(1)(ix) would be considered as had been given full effect to for the period covered under the period of exemption. Thus, unabsorbed allowances or deductions are not allowed to be carried forward and set off against the income of the assessment years following the period of exemption.

14.4 The losses under section 72(1) or 74(1) or 74(3) are not allowed to be carried forward in assessment years succeeding the period of exemption. The deductions under section 80-IA or 80-IB or 80JJA shall also not be available to such undertakings.

14.5 In the assessment year following period of exemption, the depreciation will be computed on the written down value of the asset as if the depreciation had actually been allowed in respect of each assessment year falling in the period of exemption.

14.6 It has also been provided that the profits may be recomputed where inter-group transfers are made at prices other than market prices or where the profits computed by the assessee are higher than the ordinarily expected profit owing to the close connection of the assessee and other entities.

14.7 The benefits under this section are optional. In case the assessee does not wish to claim the benefit under section 10C, he has to file a declaration to this effect along with the return of income before the due date of filing the return for the first assessment year for which the exemption under this section is available to him.

14.8 These amendments take effect from the 1-4-1999, and, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. [*Clause 7*].

Legislative amendment under 1961 Act.—*I. The Finance Act, 2003.*—By the **Finance Act, 2003** (32 of 2003), **proviso to section 10C(6)** has been **inserted (w. e. f. 1-4-2004)** before the *Explanation* to section 10C.

3. Ins. by the Finance Act, 2003 (32 of 2003), s. 9 (w. e. f. 1-4-2004).

For the scope and effect of the above insertion, reference may be made to paras. 49 to 49.6 of the *Departmental Circular No. 7 of 2003, dated 5-9-2003*.

Exemption in respect of profits and gains from certain industrial undertakings located in North-Eastern Region.—Section 10C(1) of the 1961 Act grants exemption in respect of any profits and gains derived by an assessee from an industrial undertaking, which has begun or begins to manufacture or produce any article or thing on or after 1-4-1998 in any—

- Integrated Infrastructure Development Centre located in the North-Eastern Region, or
- Industrial Growth Centre located in the North-Eastern Region.

“Integrated Infrastructure Development Centre”, defined.—As per **clause (i) of the Explanation to section 10C** of the 1961 Act, the expression “Integrated Infrastructure Development Centre” has been defined, by way of an exhaustive definition, so as to **mean** such centres located in the States of the North-Eastern Region, which the Central Government may, by notification in the Official Gazette, specify for the purposes of section 10C of the 1961 Act.

The Central Government has specified the following IIDC for the above purpose *vide Notification No. SO 1032(E), dated 13-10-1999*:—

- (1) Integrated Infrastructure Development, Delgaon, Darrang District, Assam;
- (2) Integrated Infrastructure Development, Bhumuraguri, Nagaon, Assam;
- (3) Integrated Infrastructure Development, Algapur in Hailakandi, Assam.

“Industrial Growth Centre”, defined.—According to **clause (ii) of the Explanation to section 10C** of the 1961 Act, the expression “Industrial Growth Centre” has been defined, by way of an exhaustive definition, so as to **mean** such centres located in the States of the North-Eastern Region, which the Central Government may, by notification in the Official Gazette, specify for the purposes of section 10C of the 1961 Act.

The Central Government has specified the following IGC for the above purpose *vide Notification No. SO 1032(E), dated 13-10-1999*:—

- (1) Barpeta, Assam;
- (2) Goalpara, Assam;
- (3) Kakopathar, Assam;
- (4) Dulianjan, Assam;
- (5) Sariharjan, Assam;
- (6) Lilabari (N. Lakhimpur), Assam;
- (7) Maibong, Assam;
- (8) Manja, Assam;
- (9) Bokulia, Assam;
- (10) Growth Centre, Balipara, Assam;
- (11) Growth Centre, Matia, Assam;
- (12) Chaygaon, Kamrup district, Assam;
- (13) Mendipathar, East Garo Hills District, Meghalaya;
- (14) Growth Centre, Bodhjunnagar, West Tripura District, Tripura.

“North-Eastern Region”, defined.—The expression “North-Eastern Region” has been defined in **clause (iii) of the Explanation to section 10C** of the 1961 Act so as to **mean** the region comprising the States of—

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim, and
- (viii) Tripura.

Eligibility criteria for eligible industrial undertakings.—The benefit of section 10C of the 1961 Act is available to any eligible industrial undertaking which fulfils all the following conditions laid down in **section 10C(2)** of the 1961 Act, namely:—

- (i) it is not formed by the splitting up, or the reconstruction, of a business already in existence, except in the cases covered by section 33B of the 1961 Act;
- (ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose, subject to the following exceptions:—
 - (a) certain cases of imported second-hand machinery as referred to in the **Explanation 1 to section 80-IA(3)** of the 1961 Act, and
 - (b) where the total value of the machinery or plant transferred to the new business does not exceed 20% of the total value of the machinery or plant used in that business.

Quantum of deduction.—The quantum of deduction under section 10C(1) of the 1961 Act is 100% of any profits and gains derived by an assessee from an eligible industrial undertakings.

Where trading transactions are not shown at market value.—**Section 10C(5)** read with **section 80-IA(8)** of the 1961 Act provides that where the goods held for the purposes of the business of the eligible undertaking are transferred to any other business carried on by the assessee, or *vice versa*, and the consideration for such transfer is, in either case, not recorded in the accounts of the eligible undertaking at the market value, the profits and gains of the business of the undertaking shall be computed as if the transfer had been made at the market value of such goods, *i.e.*, the price which such goods would have ordinarily fetched on sale in the open market. In case of exceptional difficulty, the Assessing Officer has been empowered to compute such profits and gains on any other reasonable basis.

Only reasonable profits eligible for exclusion.—**Section 10C(5)** read with **section 80-IA(10)** of the 1961 Act provides that in a case where because of a close connection between the taxpayer carrying on the business of the eligible undertaking and any other person, or for any other reason, more than ordinary profits accrue to the business of the eligible undertaking, the Assessing Officer has to determine the reasonable profits that could be attributed to the business of eligible undertaking.

Tax holiday period.—As per **section 10C(3)** of the 1961 Act, the eligible industrial undertaking shall be entitled to the exemption under **section 10C(1)** of the 1961 Act for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which such industrial undertaking begins to manufacture or produce such articles or things.

Follow-up consequences in subsequent assessment years.—**Section 10C(4)** of the 1961 Act opens with a *non obstante* clause “Notwithstanding anything contained in any other provision of this Act”, thus, overriding any other provision of the 1961 Act and enacts certain special provisions for computing the total income of the assessee of any previous year relevant to any subsequent assessment year.

By virtue of **section 10C(4)(i)** of the 1961 Act, it shall be presumed that full allowance under the following provisions had been given effect to even though not actually shown in the computation:—

- (a) section 32 of the 1961 Act – depreciation;
- (b) section 35 of the 1961 Act – expenditure on scientific research; and
- (c) section 36(1)(ix) of the 1961 Act – expenditure by a company for promoting family planning amongst its employees.

Accordingly, the following provisions shall not be given effect to:—

- (a) section 32(2) of the 1961 Act – unabsorbed depreciation allowance;
- (b) section 35(4) of the 1961 Act – unabsorbed capital expenditure on scientific research; and
- (c) section 36(1)(ix), 2nd proviso of the 1961 Act – unabsorbed capital expenditure on family planning.

Section 10C(4)(ii) of the 1961 Act further provides that unabsorbed business losses [s. 72(1) of the 1961 Act] and/or unabsorbed loss under the head “Capital gains” [s. 74(1) or s. 74(3) of the 1961 Act], relating to the business of the eligible industrial undertaking for any of the relevant assessment years shall not be allowed to be carried forward or set off.

Section 10C(4)(iii) of the 1961 Act ensures that if benefit under section 10C of the 1961 Act has been availed of for any or more year(s) comprised in the tax holiday period, then, in such cases, the taxpayer shall not be entitled to claim straight deductions under sections 80HH, 80HHA, 80-I, 80-IA, 80-IB and/or 80JJA of the 1961 Act, in relation to the profit and gains of the eligible industrial undertaking.

Section 10C(4)(iv) of the 1961 Act further ensures that for computing depreciation allowance under section 32 of the 1961 Act, the “written down value” of any depreciable asset of the eligible industrial undertaking shall

be ascertained as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

“Relevant assessment years”, defined.—**Clause (iv) of Explanation to section 10C** of the 1961 Act coins an exhaustive definition of the expression “relevant assessment years” so as to **mean** the 10 consecutive years beginning with the year in which the industrial undertaking begins to manufacture or produce articles or things.

Option not to avail of the tax holiday under section 10C of 1961 Act.—**Section 10C(6)** of the 1961 Act, which has an overriding effect, gives an option to the taxpayer to intimate his Assessing Officer, by a declaration in writing before the expiry of the due date for filing his return, that provisions of section 10C of the 1961 Act may not be made applicable to him. If he does so, the provisions of section 10C of the 1961 Act shall have no application in his case.

No deduction to be allowed under section 10C of 1961 Act for and from assessment year 2004-05.—As provided in the **proviso** below **section 10C(6)** of the 1961 Act, no deduction under section 10C shall be allowed to any industrial undertaking for the assessment year beginning on 1-4-2004 and subsequent years.

Thus, the deduction under section 10C of the 1961 Act can be availed of by an eligible industrial undertaking up to and including assessment year 2003-04, on fulfilment of the requisite conditions in that regard.

Erstwhile provisions of section 16 of the 1961 Act

[Page 4899 of Volume 3 of Chaturvedi & Pithisaria's Income Tax Law, 9th Edition]

Purchase of books and other publications [up to assessment year 1974-75].—If any books or other publications were necessary for the purpose of performance of duties of employment, and the assessee spent any sum of money towards the purchase of such books or other publications, an amount not exceeding ₹ 500 could be deducted on that account. Subscriptions to professional journals did come under this clause. The matter was elaborated in the following *Departmental Circulars*:—

- (1) '*Expenditure on the purchase of books.*—Except in the case of a journalist or an employee doing literary work, the deduction of ₹ 500 in respect of books is not permissible in respect of literary books or magazines which are read for the purpose of improving one's general knowledge or for entertainment. The intention is that the books and publications should be more or less of a technical nature. The Income-tax Officer will ordinarily give the deduction if he is satisfied that the books or periodicals are of use to the employee in providing the service which he is required to give to his employer.' [Circular No. 33(LXXVI-5) of 1955, dated 1-8-1955].
- (2) 'The intention is that the books and publications purchased should be of use to the employee in providing the service which he is required to give to his employer. Thus, except in the case of a journalist or a person employed on literary work, the deduction is not permissible in respect of expenditure incurred on books of literary interest or magazines, etc., which are read for the purpose of improving one's general knowledge or for entertainment. A detailed list of the books purchased, together with their prices and a certificate that the assessee had actually spent the amount claimed should be furnished at the time of assessment. As the new provisions became effective from the assessment year 1956-57, the accounting year for which is 1955-56, it is possible that the vouchers in respect of all the purchases made after April 1, 1955 might not be available. In such cases, the production of vouchers for the assessment year 1956-57 will not be insisted upon. The deduction admissible is subject to a maximum of ₹ 500 per year.' [Circular No. 23(LVIII-8) of 1956, dated 9-7-1956, as corrected by Circular No. 37(LVIII-10), dated 21-9-1956].

Expenditure incurred on maintenance and wear and tear of conveyance owned [up to assessment year 1974-75].—The following portion of Circular No. 23(LVIII-8) of 1956, dated 9-7-1956, as corrected by Circular No. 37(LVIII-10), dated 21-9-1956 was relevant on the point pre-1961 Act:—

"Every salaried employee who maintains and makes use of a conveyance of his own for the purposes of his official work will be entitled to a deduction from his salary for the financial year 1955-56 (liable to be taxed in the assessment year 1956-57) of a reasonable proportion of the running expenditure and of the normal wear and tear which can be attributed to the use of the conveyance for the purposes of his employment as distinct from his private and personal use. For making a reasonable estimate of the amount to be allowed, the Income-tax Officer will require the following information:

- (a) the total expenditure incurred in running the conveyance during the relevant year;
- (b) the date of purchase, the original cost and the period for which it was in the employee's use during the year; and
- (c) the status of the employee and the nature of duties of the employee necessitating the use of the conveyance and indicating the extent of such use for purposes of employment.

Where adequate details in respect of item (a) are not available, the employee should furnish a certificate to the effect that the total cost of running and maintaining the car was not less than a specified amount.

The employee should also furnish a certificate indicating what proportion of the expenditure on the maintenance and use of the car was for purpose of employment. (Care should naturally be taken to see that excessive and unreasonable claims are not made). For this purpose, trips between the residence and office or regular place of work, to and from, will be regarded as being for the purposes of employment.

Journeys in one's own conveyance for which travelling allowance is charged will not qualify for the concession. Similarly, no deduction will be allowable, if the employee is in receipt of a conveyance allowance, or is provided with free transport, at employer's cost.

No abatement in respect of this concession will be permissible at the time when tax is deducted from salary at source from month to month. The assessee's claim in this behalf will be considered only at the time of assessment."

Under the then section 16(iv) of the 1961 Act, a salaried taxpayer owning a conveyance and using it for the purpose of his employment was entitled to a deduction for the expenditure incurred by him on the maintenance of the conveyance and for its wear and tear. This deduction was, for assessment years 1962-63 to 1967-68, to be estimated by the Income-tax Officer at the time of regular assessment. For and from assessment years 1968-69 to 1974-75, the law fixed the following scale for such deduction:—

Category of conveyance	Amount of deduction for assessment year(s)			
	1968-69 and 1969-70	1970-71	1971-72	1972-73 to 1974-75
Motor car, where income not exceeded ₹ 15,000	₹ 150 per month	₹ 200 per month		
Motor car, where income ranged between ₹ 15,001 and ₹ 25,000	₹ 200 per month			
Motor car, where income exceeded ₹ 25,000	₹ 250 per month	₹ 200 per month		
Motorcycle, scooter or other moped	₹ 50 per month	₹ 60 per month		₹ 75 per month
Bicycle	₹ 5 per month	₹ 35 per month [assessee was not required to own the bicycle]		
Other conveyance	As per ITO's estimate	₹ 35 per month [assessee was not required to own the conveyance]		₹ 50 per month [assessee was not required to own the conveyance]

Since the phrase “used for the purpose of employment” has been omitted for and from assessment year 1968-69, it was clarified *vide Circular No. 15, dated 8-5-1969* that a declaration from the employee that the conveyance was owned by him and was being used by him for the purposes of employment might be considered adequate by the disbursing officer for the purpose of calculation of tax deductible at source under section 192 of the 1961 Act. Further, this allowance was permissible only if the assessee was not in receipt of a conveyance allowance from his employer, and the conveyance was registered in his own name and not in the name of his wife or any other person [*vide Circular No. 10, dated 26-3-1969*: Direct Taxes Bulletin, June, 1969, page 100]. In the facts of *CIT v. P. Gency*, (1986) 162 ITR 434 (Bom), it was found that the amount paid by the employer to the employee to meet latter's outdoor travelling allowance was not ‘conveyance allowance’ within the meaning of the then section 16(iv) of the 1961 Act. Therefore, the assessee-employee, who owned a motor-car, was held entitled to the deduction under the then section 16(iv) of the 1961 Act.

Vide Circular No. 44, dated 4-8-1970, it was clarified for and from assessment year 1971-72 that salaried employees who did not own any conveyance as also those who own a bicycle or any other conveyance, not being a motor car, motor cycle, scooter or other moped, were entitled to standard deduction of ₹ 35 (or ₹ 50) for each calendar month or part thereof comprised in the period of their employment during the year and in order to be eligible for this deduction it was not necessary for the employee to prove that he had actually incurred any expenditure on travelling for the purposes of his employment. The aforesaid deduction should, therefore, be taken into account in calculating tax deducted at source from the salary income of such employees.

This maintenance allowance was permissible even for the period during which such conveyance was temporarily out of use because it was under repairs [see, *Circular No. 97, dated 14-12-1972*: (1973) 87 ITR (St) 26].

Where a motor-car was not owned by the assessee-employee, he was not entitled to claim deduction under the then section 16(iv) of the 1961 Act [*CIT v. Chandulal J. Patel*, (1981) 127 ITR 786 (Guj)].

Amount necessarily expended by the employee [up to assessment year 1974-75].—Clause (v) of section 16 of the 1961 Act entitled the employee-assessee to claim a deduction, from the amount of salary, etc., received by, or due to, him of any amount actually expended by the assessee, which, by the conditions of his service, he was required to spend out of his remuneration, wholly, necessarily and exclusively in the performance of his duties, and which was not an amount covered by any other clause of section 16 of the 1961 Act [see, *A.K. Venkiteswaran v. CIT*, (1973) 92 ITR 233 (Ker)].

Exemption under the then section 10(14) of 1961 Act and deduction under the then section 16(v) of 1961 Act, a comparative analysis.—A special allowance specifically granted to an employee to meet expenses wholly, necessarily and exclusively incurred by him in the performance of his duties as an employee is to be excluded in

the computation of his total income under section 10(14) of the 1961 Act (operative up to 31-3-1989), if and in so far as the employee establishes that the special allowance received has been expended and the expenses were actually incurred by him for the specific purpose. It would be assessable as an income of the employee unless it is established that the employee has spent it for the specific purpose [*Sohanlal G. Sanghi v. CIT*, (1966) 61 ITR 203 (Bom)]. Section 16(v) of the 1961 Act, on the other hand, did not envisage any receipt of any special allowance; it allowed deduction from out of the salary income if, without corresponding receipt, an amount was actually expended, as required by the conditions of his service, by the assessee wholly, necessarily and exclusively in the performance of duties of employment.

Section 16(v) of the 1961 Act allowed deduction from salary of any amount expended by the assessee which, by the conditions of his service, he was required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties. Before deduction of an amount could be claimed under section 16(v) of the 1961 Act, three conditions must cumulatively have been satisfied, viz., (1) the amount must be actually expended by the assessee, (2) the amount must be expended out of the remuneration of the assessee wholly, necessarily and exclusively in the performance of his duties, and (3) the assessee must have been required to spend the said amount out of his remuneration by the conditions of his service [*Addl. CIT v. Dr. M.K. Krishna Menon*, (1977) 109 ITR 204, 206 (Mad); *CIT v. Babubhai M. Chinai*, (1981) 130 ITR 525, 532 (Bom)]. The requirements were cumulative; what was required to be shown was that the assessee was required to spend the amount out of his remuneration not only wholly but also necessarily and exclusively in the performance of his duties. The test was not whether the employer imposed the expense but whether the duties did, in the sense that, irrespective of what the employer might have prescribed, the duties could not be performed without incurring the particular outlay [*Brown v. Bullock*, (1961) 40 TC 1, 10 (CA)].

The expression “in the performance” is much narrower in scope than the expression “for the purpose of performance”. Expenses like paying room rent at the place of employment other than his home town were not covered within the provisions [*A.K. Venkiteswaran v. CIT*, (1973) 92 ITR 233 (Ker)]. In *Addl. CIT v. Dr. M.K. Krishna Menon*, (1977) 109 ITR 204 (Mad), the claim of the assessee for deduction of his foreign tour expenses was negatived on the ground that there was no obligation imposed on the assessee by the conditions of his service to undertake the tour. **But** in *CIT v. Babubhai M. Chinai*, (1981) 130 ITR 525 (Bom), remuneration paid by the assessee-employee to his son, who was taken as his assistant for performing duties assigned to the assessee by the employer-company, was, on facts, held allowable. Similarly, in *CIT v. Chandulal J. Patel*, (1981) 127 ITR 786 (Guj), the amount actually spent by the assessee-employee on the maintenance and use of a car was held allowable. In the facts of *Dr. G.G. Joshi v. CIT*, (1994) 209 ITR 324 (Guj), the assessee, a branch manager of a company, was held entitled to a deduction to the extent of a certain percentage of sales to him as secret commission under, *inter alia*, section 16(v) of the 1961 Act.

In *Nolder v. Walters*, (1930) 46 TLR 397 = 15 TC 380, it was, under the corresponding English rule, held that an aeroplane pilot was not entitled to claim any deduction in respect of the upkeep of a motor-car to convey him between the aerodrome and his home, or a telephone at his home [Also see, *Blackwell v. Mills*, (1947) 15 ITR (Supp.) 63 (KB); *Ricketts v. Colquhoun*, (1926) 10 Tax Cas 118 (KB)]. In *Nolder's* case, a deduction claimed and allowed for an excess of actual subsistence expenses when away from home on duty over subsistence allowance granted by the employer was not disturbed as being erroneous in law. In *Lomax v. Newton*, 34 TC 558, amounts paid for hotel accommodation at conferences and exercises in excess of detention and ration allowances were allowed to be deducted under the corresponding English rule. Extra living expenses which the employer requires the employee to incur in the particular place where the duty has to be done are to be allowed and were allowed in the above two English cases, “as wholly, exclusively and necessarily incurred in the duty of the office”. Also see, *Bolam v. Barlow*, (1949) 31 Tax Cas. 136 (KB); *McKie v. Warner*, (1961) 40 Tax Cas. 65 (Ch D); *Smith (Inspector of Taxes) v. Abbott*, (1992) 198 ITR 628 (Ch D), **reversed in** *Smith (Inspector of Taxes) v. Abbott*, (1994) 210 ITR 323 (CA), **reversed, in its turn, in**, *Fitzpatrick v. Inland Revenue Commissioners: Smith (Inspector of Taxes) v. Abbott*, (1995) 213 ITR 411 (HL); *Kirkwood (Inspector of Taxes) v. Evans*, (2004) 267 ITR 409, 421-22 (Ch D).

In this regard, the view expressed by Warrington L.J. in his **dissenting judgment** in *Ricketts v. Colquhoun*, 10 TC 118, 128 is instructive. His Lordship opined that the words ‘necessarily’ and ‘necessary’ in the rule do not mean necessary and necessarily in the abstract, but they mean necessary in regard to the circumstances of the individual concerned, the holder of the office, and in regard to the ordinary usages of mankind at this time in the history of the world”. The *Ricketts'* case, however, has been **distinguished in** *Owen v. Pook*, (1969) 74 ITR 147 (HL). There, the taxpayer performed the duties of his office at two places. It was held that the expenses incurred in travelling from one place to the other were necessarily incurred in the performance of his duties.

In *Sanderson v. Durbidge*, (1956) 29 ITR 177 (Ch D), an employee of a Borough Council claimed expenses for feeding himself at a restaurant during lunch hours when he had occasion to work extra hours. It was held that he could not be said, when going out during the lunch hour to have lunch, to be engaged in the performance of the duties of his office.

Decisions in *Lomax* case; *Nolder's* case; and *Elwood v. Utitz*, (1965) 42 TC 482 (CA) clearly show that even expenses incurred by way of personal expenses, and even though the incurring of such expenses did not synchronise with the hours of duty, could be claimed as permissible deduction as provided under section 16(v) [see, *CIT v. D.R. Phatak*, (1975) 99 ITR 14, 23 (Bom)]. In that view of the matter, the city compensatory allowance received by the assessee during each of the accounting period relevant to the assessment years 1971-72 and 1972-73 was held deductible under the then section 16(v) [*CIT v. K.S. Krishnan*, (1990) 185 ITR 239 (Bom)].

Exchange compensation allowance.—The following Circular No. 3(XXXVII-4) of 1956, dated 27-1-1956 is on the point:—

'Exchange Compensation Allowance drawn by officers and staff posted abroad.—A question has been raised whether the Exchange Compensation Allowance paid to certain officers and staff posted for duty in the Indian Missions abroad is liable to income-tax in the hands of the recipients.

2. The Board understand that the salary and foreign allowance of such personnel posted abroad are fixed in Indian rupees but they are drawn partly in local currency and partly remitted to India in rupees for expenditure in this country or to London, etc., in sterling for essential purchases made by such personnel. Exchange Compensation Allowance is a special allowance granted to such personnel to cover the loss in exchange attributable to pay foreign allowance consequent upon the non-devaluation of the currency of the country in which officers and the staff have been posted.

3. The case of these officers has been carefully examined and it has been decided that as the salary and allowances of the officers posted abroad are fixed in Indian currency, the exchange compensation allowance granted to cover the loss in exchange relating to pay and that relating to foreign allowance should be regarded as forming part of the pay and the foreign allowance respectively. Hence, the exchange compensation allowance forming part of pay will be liable to tax in India in the hands of the officer concerned only when the salary earned abroad becomes taxable in India, and the exchange compensation allowance forming part of the foreign allowance will be wholly exempt from tax so far as the assessments for the years prior to the assessment year 1955-56 are concerned. As regards subsequent assessments, only so much of the said allowance will be exempt from tax as is actually expended for the purpose for which the foreign allowance is given. These exemptions are, however, subject to the condition that the foreign allowance is specifically granted to meet expenses wholly and necessarily incurred in the performance of duties of the office.

Omitted/Phased out provisions of sections 18 to 21 of the 1961 Act

Omitted section 18.—Section 18, prior to its omission by the Finance Act, 1988 (26 of 1988), with effect from 1st April, 1989, stood as follows:—

‘S. 18 Interest on securities.—(1) The following amounts due to an assessee in the previous year shall be chargeable to income-tax under the head “Interest on securities”,—

- (i) interest on any security of the Central or State Government ¹[****];
- (ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

(2) Nothing contained in sub-section (1) shall be construed as precluding an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year.’

The above section 18 remained in operation for assessment years 1962-63 to 1988-89. For and from assessment year 1989-90, the income by way of interest on securities are chargeable to tax under the head “Profits and gains of business or profession” where such income accrues or arises or received in respect of securities held as stock-in-trade or trading assets. If not so chargeable, the same has been made, under section 56(2)(id), chargeable under the residuary head “Income from other sources” [see, *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT*, (1997) 227 ITR 172, 178 (SC)]. Reference in this connection may be made to paragraphs 10.1 and 10.2 of the departmental circular No. 528, dated 16-12-1988, which have been reproduced, *ante*, under section 14. The annotations hereunder given relates to such omitted section 18.

Corresponding provisions.—This section corresponded, substantially, to the provisions of section 8 (main part) of the 1922 Act.

Provisions compared with those in the 1922 Act.—There were two broad and substantial changes in these provisions, namely:

(1) In section 18, the changes made from the corresponding provisions in the 1922 Act were: the substitution of the word ‘due’ for the word ‘receivable’, and the insertion of a provision for chargeability of interest received in any year but not charged on the ‘due’ basis earlier. The first of the changes brought the charge under this section in line with the other provisions of the Act whereby liability to tax attaches at the point of accrual of income and not on the receipt basis, and the second one secured that income does not escape tax.

In view of this change from “receipt” to “due” basis for chargeability, the law laid down in cases based on the earlier state of law on the point, *e.g.*, *Seth Lalbhai Dalpatbhai v. CIT*, (1952) 22 ITR 13 (Bom); *Karumuthu Thiagaraja Chettiar v. CIT*, (1953) 24 ITR 593 (Mad); *Central Exchange Bank Ltd. v. CIT*, (1955) 27 ITR 167 (Lah); and *Bhim Sen Khosla v. CIT*, (1982) 133 ITR 667 (Del) did not hold good.

(2) While section 8 of the 1922 Act brought interest on debentures and other securities for money issued by or on behalf of a local authority or a company within the ambit of “interest on securities”, section 18(1)(ii) of the 1961 Act enlarged the provisions so as to include interest on debentures or other securities for money issued, also, by or on behalf of a Corporation established by a Central, State or Provincial Act.

The subsequent insertion made by the Finance Act, 1965 (10 of 1965), in section 18(1)(i), effected exclusion, from the head of income ‘Interest on securities’, of the interest element included in an annuity payable under section 280D of the Income-tax Act. The omission made (w. e. f. 1-4-1988) in section 18(1)(i) by the Finance Act, 1988 (26 of 1988), doing away with such insertion for and from assessment year 1988-89, was consequent upon the omission, by that Act, of Chapter XXIIA.

Scope of section 18—What securities were included?—The section took in interest on any security of the Central or State Government but not that payable on Annuity Deposits under section 280D of the 1961 Act. Section 3(24) of the General Clauses Act, 1897 (10 of 1897), defines “Government securities” as meaning “securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B State”. It may be noted that the words used in section 18(1)(i) were not “Government securities” but “security of the Central or State Government...”, the General Clauses Act definition has no application in the interpretation of the scope of this section [*CIT v. Mir Osman Ali Bahadur*, (1966) 59 ITR 666, 680 (SC)].

1. The words, figures and letters “not being interest payable under section 280D in respect of any annuity deposit made under Chapter XXIIA” have been omitted by Act 26 of 1988, s. 54(ii) (w. e. f. 1-4-1988). These were, earlier, inserted by the Finance Act, 1965 (10 of 1965), s. 7 (w. e. f. 1-4-1965).

It may be of interest to note that the expression "Government security" has also been defined in section 2(2) of the Public Debt Act, 1944 (18 of 1944), so as to mean—

"(a) a security, created and issued by the Government for the purpose of raising a public loan, and having one of the following forms, namely:—

- (i) stock transferable by registration in the books of the bank; or
- (ii) a promissory note payable to order; or
- (iii) a bearer bond payable to bearer; or
- (iv) a form prescribed in this behalf;

(b) any other security created and issued by the Government in such form and for such of the purposes of the Act as may be prescribed".

The expression "Government security" has also been defined in section 2(a) of the Indian Securities Act, 1920 (10 of 1920), as meaning, "promissory notes (including treasury bills), stock-certificates, bearer bonds and all other securities issued by the Central Government at any time or by the Government of any Part A State before the 1-11-1956, or by a State Government on or after that date in respect of any loan contracted either before or after the passing of this Act, but does not include a currency note".

In *British Bank of the Middle East v. CIT* [(1998) 233 ITR 251, 255, 256 (Bom)], it has been held that it is abundantly clear from the definition of 'Government security' contained in the above two enactments [18 of 1944 and 10 of 1920] that treasury bills are Government securities. As the earnings by way of discounting of treasury bills are 'interest' on Government securities, the same are charged to be taxed under section 18 for the assessment year 1977-78. This view has been **followed in** *CIT v. Banque Nationale De Paris* [(1999) 237 ITR 278, 280 (Bom)]; *Banque Nationale De Paris v. CIT* [(1999) 237 ITR 518, 520 (Bom)]; *Mercantile Bank Ltd. v. CIT* [(2001) 252 ITR 225, 227 (Bom)].

In *Citibank N.A. v. CIT* [(2003) 262 ITR 47, 49 (Bom)], it has been held that the interest received by the bank on the sale of Government securities as also discount on treasury bills were assessable as 'Interest on securities' and not as business income.

In view of the omission (w. e. f. 1-4-1989) of section 18, the third proviso to section 145(1) was inserted (w. e. f. 1-4-1989) which is a saving clause. In the instant case, it has been held that even though section 18 was omitted, the assessee was taxable for interest on securities only on specified dates when it became due for payment, in view of the third proviso to section 145(1), which was in force during the relevant assessment years [*CIT v. Tamilnadu Mercantile Bank Ltd.*, (2007) 291 ITR 137 (Mad)].

Securities issued before 15-8-1947, by the then Hyderabad State [*CIT v. Mir Osman Ali Bahadur*, (1966) 59 ITR 666 (SC); *CIT v. Trustees of HEH The Nizam's Miscellaneous Trust*, (1969) 74 ITR 558 (AP)] or issued by the erstwhile Indian State of Travancore-Cochin [*Banaras State Bank Ltd. v. CIT*, (1969) 74 ITR 863 (SC)] were within the scope of this section. Similarly, Zamindari Compensation Bonds issued under UP Zamindari Abolition and Land Reforms Act (1 of 1951) were held to be Government securities under the Public Debts Act, 1944 (18 of 1944), and interest thereon was held to be assessable under these provisions [*Jagdambika Pratap Narain Singh v. CIT*, (1963) 50 ITR 678 (All)]. At the same time, securities which were originally issued by the then Mysore Durbar were held to be not within the purview of section 8 of the 1922 Act [*Indian Bank Ltd. v. CIT*, (1968) 67 ITR 553 (Mad)].

Securities issued by foreign Governments did not come within the purview of this section. The expression "Central Government" when used in any law of a particular country means the Central Government of that country. Securities issued by the Government of India before the Partition would not, therefore, come within the purview of the corresponding section 8 of the Pakistan Income-tax Act [*Central Exchange Bank Ltd. v. CIT*, (1955) 27 ITR 167 (Lah)].

Clause (ii) of section 18(1) brought within the purview of these provisions interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act. Thus, the section covered interest on (a) securities issued by (i) the Central Government (excepting Annuity Deposits) or (ii) any State Government, and (b) on debentures or other securities for money issued by or on behalf of (i) a local authority, (ii) a company, or (iii) a statutory corporation.

In *CIT v. Upnishad Investment P. Ltd.* [(2003) 260 ITR 532, 540 (Guj)], special leave petition dismissed by the Supreme Court : (2004) 266 ITR (St.) 1-2 (SC); (2004) 266 ITR (St.) 3-4 (SC); (2004) 266 ITR (St.) 105 (SC)], it has been held that interest on debentures issued by all companies, whether or not established by a Central, State or Provincial Act, was liable to be computed as income under the head 'Interest on securities' as per the provisions of the then section 18(1)(ii) for the assessment years 1987-88 and 1988-89.

Further, in the facts of that case [260 ITR 532, 548 (Guj)], it has been held that since the assessee was adopting the cash system of accounting, interest on debentures of ASE Ltd. and Repropack (P.) Ltd., was liable

to be considered as income only when received by the assessee and not when it was due for payment by the respective companies.

As held in *S.S. Dhanoa v. Municipal Corporation of Delhi* [AIR 1981 SC 1395, 1399, 1396], a co-operative society is not a statutory body because it is not created by a statute. It is a body created by an act of group of individuals in accordance with the provisions of a statute. A co-operative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature. In that view of the matter, the interest on debentures issued by the co-operative land mortgage bank could not be assessed as 'Interest on securities' and the same has been held chargeable to tax under the head 'Income from other sources' [*CIT v. Lakshmi Vilas Bank Ltd.*, (1997) Tax LR 734, 735 (Mad) = (1998) 234 ITR 796, 797 (Mad), **following** *CIT v. Lakshmi Vilas Bank Ltd.*, (1997) 228 ITR 697, 712-13 (Mad)].

Assessment only under this section if provisions had application.—Income of an assessee is one and the various sections 15 to 59 are modes in which the statute directs that income is to be computed; and these sections are mutually exclusive. When an item falls under one head of income, it has to be charged under that head and no other. Thus, income from "Interest on securities" even where such securities were held as stock-in-trade or trading assets in the course of one's business, fell under section 18 and not under section 28; it then could not be brought under a different head of income, e.g., "Profits and gains of business or profession" under section 28 [*United Commercial Bank Ltd. v. CIT*, (1957) 32 ITR 688 (SC); *H.C. Kothari v. CIT*, (1951) 20 ITR 579 (Mad); *CIT v. Narandas & Sons*, (1978) 115 ITR 587 (Bom); *CIT v. Narandas & Sons*, (1986) 162 ITR 599 (Bom)].

But in *Karnataka Bank Ltd. v. CIT* [(1978) 114 ITR 421 (Karn)], the Bank, carrying on banking business, realised certain amount on the sale of its securities. Out of the sale proceeds, the bank treated a sum of Rs. 82,305 as interest realised for the broken period up to the date of sale which they claimed as exempt. The authorities and the Tribunal held that entire profits, including the sum of Rs. 82,305, on the sale should be assessed as business income. The Karnataka High Court, in upholding that view, observed: that where securities were held by an assessee, which was carrying on business of banking, as part of its circulating capital in the course of its banking business, any profit derived by it on the sale of such securities was to be assessed as income from business under section 28.

In *CIT v. Catholic Syrian Bank Ltd.* [(1997) 228 ITR 363, 364, 371 (Ker)], the assessee-bank received a sum of Rs. 1,25,858, which is representing the amount of interest relating to the broken period in the context of securities purchased by the assessee-bank. Such sum has been shown by the bank for the purpose of accounting as an expenditure. It has been held that such sum is the income of the assessee-bank and cannot be regarded as an expenditure in the hands of the assessee-bank.

Other provisions in the Act about Government securities, etc.—I. *Exemption from inclusion in the total income of interest on securities has been provided for under the following sections:*—

- s.10(15), provides for exemption from inclusion in the total income of interest in cases of securities named therein;
- s.10(20), provided for similar exemption, up to assessment year 1988-89, in the case of interest on securities belonging to a local authority [also see, clauses (20A), (21), (22), (22A), (23), (23A), (23AA), (23B), (23BB), (23BBA), (23C) and (26A) of section 10];
- s.10(24), provided for similar exemption, up to assessment year 1988-89, in the case of interest on securities belonging to certain registered trade unions;
- s.10(25), provides for similar exemption of interest on securities which are held by, or are the property of, any provident fund to which the Provident Fund Act, 1925 (19 of 1925), applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities; or interest received on behalf of a recognised provident fund or on behalf of an **approved** superannuation fund or, with effect from 1-4-1973, on behalf of an **approved** gratuity fund;
- s. 13A, provides for similar exemption, for assessment years 1979-80 to 1988-89, in respect of, *inter alia*, "Interest on securities" earned by a "political party";
- s. 80L provides for straight deduction for, *inter alia*, interest on Central or (now omitted), State Government securities;
- s. 80P(2)(f), provides for deduction, *inter alia*, of interest on securities from the total income of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operation with the aid of power where the gross total income does not exceed Rs. 20,000 [Also

see, *U.P. Co-operative Bank Ltd. v. CIT*, (1966) 61 ITR 563 (All) and the cases referred to there, a case in the context of corresponding provisions of section 14(3)(i) & (iv) of the 1922 Act].

II. Tax-free Securities—Securities may be issued “tax-free” by the Central Government, or by a State Government, borrowing money on the issue, if the terms of the issue so provide.

If a State Government issues tax-free securities, section 181 (operative up to assessment year 1988-89) provided that income-tax shall be payable by the State Government on the interest on such securities at the relevant rate from time to time notified by the Central Government with a ceiling of 25 per cent.

III. Interest on tax-free securities to be added to the income for rate purposes.—Section 66 provides that in computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII [section 86 & section 86A, later operative for assessment years 1965-66 to 1988-89]. Thus, the amount of interest due on tax-free securities is to be added up and included in the total income of the assessee. The assessee, however, was, under section 86A, entitled to a deduction, for assessment years 1965-66 to 1988-89, from the amount of income-tax with which he was chargeable on the total income, of an amount equal to the income-tax calculated on the amount of such interest at the average rate of income-tax or 27½ per cent., whichever was less. To take an example, in case of an unmarried individual, his income for assessment year 1969-70,—

—from business was	...	Rs. 40,000
—from interest on tax-free securities was	...	Rs. 10,000
	Total income	Rs. 50,000

Tax on Rs. 50,000 = Rs. 17,462.50 P.

Average rate of tax is 34.92 paise per rupee.

As 27½ % was the lesser amount—

Total tax payable on Rs. 50,000	=	Rs. 17,462-50P.
Less Tax on Rs. 10,000@27½%	=	Rs. 2,750-00P.
Tax payable will be		Rs. 14,712-50P.

It may be noted that the assessee was entitled to rebate (as provided for in section 86A) on the whole amount of interest on securities and not on the whole amount minus the reasonable sum expended by the assessee in realizing the said interest [*Cf. CIT v. South Indian Bank Ltd.*, (1966) 59 ITR 763 (SC); *Kumbakonam Bank Ltd. v. CIT*, (1973) 92 ITR 302 (Mad)].

IV. Exemption under the 1922 Act—notifications still available.—Under sections 60(1) and 60A of the 1922 Act, the Central Government has, by issuance of notifications, made interest on certain securities to be exempt from tax payable under the 1922 Act, but such interest is to be taken into account in determining the total income of an assessee for the purposes of the said Act. In other words, a rebate is to be allowed on such interest. By virtue of the provisions of section 297(2)(i) of the 1961 Act, notwithstanding the repeal of the 1922 Act, any notification issued under section 60(1) or section 60A of the 1922 Act and in force immediately before 1-4-1962, shall, to the extent to which provision has not been made under the 1961 Act, continue in force. However, the Central Government has been empowered to rescind such notification or amend it so as to rescind any exemption, reduction in rate or other modification made thereunder. Thus, an assessee is entitled to claim benefit of an unrescinded notification issued under section 60(1) or section 60A of the 1922 Act in respect of interest on securities [see, *Kumbakonam Bank Ltd. v. CIT*, (1973) 92 ITR 302 (Mad)].

V. Income-tax deductible at source.—Section 193 provides that a person responsible for paying interest on securities other than those specifically excepted by the proviso to that section is bound to deduct, (upto 31-5-1989) at the time of payment, income-tax at the rates in force, on the amount payable, unless the Assessing Officer has granted a certificate of exemption under section 197.

Accrual of interest on securities.—Interest on Government securities did not accrue from day to day, but on certain fixed days. Where securities are purchased at a price expressed as a capital sum plus interest computed de die in diem from the last “due” date to the date of sale, interest thus paid to the vendor was not deductible from the interest actually due to or received by the purchaser on the next “due” date in computing the total income of the purchaser [*Haveli Shah Sardari Lal v. CIT*, (1936) 4 ITR 297 (Lah); *Rajniti Prasad Singh v. CIT*, AIR 1930 Pat 33; *Punjab Co-operative Bank Ltd. v. CIT*, (1938) 6 ITR 355 (Lah)]. Such interest was the income

of the person who happened to be the owner of the securities on the day when the interest became “due” whether or not he did own the securities for the entire year in respect whereof the interest was payable.

In the case of interest on securities, the income fructified to the assessee only when the securities yielded interest and, only in such a situation was section 18 attracted [*CIT v. Canara Bank*, (1992) 195 ITR 66, 71 (Karn)]. In the facts of that case, it has been held that the interest could be claimed by the assessee only by 31st March, or at any rate subsequent to the date of accrual stated in the accounts of the assessee for the purpose of its accounting. The Tribunal was right in law in deleting the addition of Rs. 12,16,33,177 which was interest relatable to the period ending on 31-12-1981, but which was payable after 31-12-1981. In that view of the matter, no question of law arose from the order of the Tribunal.

In *CIT v. Punjab & Sind Bank Ltd.* [(1999) 239 ITR 343, 344, 345 (Del)], the interest on securities has been held chargeable on due basis.

In *E.I.D. Parry (India) Ltd. v. CIT* [(2000) 243 ITR 116, 121 (Mad)], the reference application has been rejected where the Tribunal has held that the unrealised interest, due to failure on the part of the assessee to collect the interest, from Government securities is to be included as income of the assessee for the assessment year 1985-86.

Sub-section (2).—Under the 1922 Act, interest on securities was includible in the total income of an assessee on receipt basis. Under the 1961 Act, interest on securities was includible in the total income of the assessee, not on receipt basis but on due basis. Section 18(2), therefore, secured that notwithstanding that such interest was by section 18(1) so chargeable on due basis, if any amount of such interest was not charged to income-tax in any earlier previous year, it shall be chargeable to tax in the year it was received.

Interest payable abroad.—Even if a Government security was issued by the Government of India on terms that interest thereon shall be payable abroad, the interest, for the purposes of income-tax, accrued in India [*Raja Bahadur Bansilal Motilal v. CIT*, (1930) 4 ITC 332 (Bom)]. Also see, section 21, *post*.

Omitted section 19.—Section 19, prior to its omission by the Finance Act, 1988 (26 of 1988) with effect from 1st April, 1989, stood as follows:—

‘S. 19. Deductions from interest on securities.—Subject to the provisions of section 21, the income chargeable under the head “Interest on securities” shall be computed after making the following deductions—

- (i) any reasonable sum expended by the assessee for the purpose of realising such interest;
- (ii) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee.’

The aforesaid section 19 remained in operation for assessment years 1962-63 to 1988-89. For and from assessment year 1989-90, where the income by way of interest on securities is chargeable to tax under section 28, all the deductions provided for in sections 29 to 43C are to be allowed. However, where such income is chargeable under the residuary head “Income from other sources”, the subject of section 19(i) has specifically been carried, in a modified form, to section 57(i) so as to make the same allowable as a deduction under the residuary head “Income from other sources”. The subject of section 19(ii) does not find a specific mention in section 57. The annotations hereunder given relates to such omitted section 19.

Provisions compared with those of the 1922 Act.—The first proviso to section 8 in the 1922 Act dealt with—

- (a) allowance in respect of any sum, which the Income-tax Officer considered to be reasonably expended by the assessee for the purpose of realising such interest;
- (b) any interest payable on money borrowed for the purpose of investment in securities—
 - (i) if paid within the taxable territories;
 - (ii) if paid outside the taxable territories but tax has been deducted at source and had been paid (unless the loan was issued for public subscription before 1-4-1938) or there was a person within the taxable territories who might have been appointed as a statutory agent of the recipient.

In the 1961 Act, that proviso was split up. Items (a) and (b)(i) above were incorporated in section 19, and item (b)(ii) in section 21.

Collection charges—section 19(i).—In order that collection charges might be deductible, the sum must be expended by the assessee for realising the interest on securities. The provisions could have application when the person collecting the interest and deducting commission was a person other than the assessee, e.g., his bankers, etc. An assessee was not entitled to charge a fee for his labour in collecting the interest and claim deduction therefor from the gross amount of interest [*United Commercial Bank Ltd. v. CIT*, (1953) 24 ITR 425 (Cal), **affirmed**, (1957) 32 ITR 688 (SC) on other points].

In *Addl. CIT v. Vijaya Bank Ltd.* [(1976) Tax LR 524 (Karn)], the assessee-bank, in the midst of a previous year, purchased Government securities. They bifurcated the price paid into two parts: (1) the price proper, and (2) interest accrued for the period from commencement of the year to the date of purchase. The assessee-bank claimed deduction for the interest element included in the purchase price.

It was held that such interest element could not be deducted since it did not fall within either of the two clauses of section 19. Clause (i) contemplated merely collection charges, and the assessee had incurred nothing on that account. Collection charges could be claimed only after the interest amount had fallen due. The amount could not also be claimed as interest because what passed between the transferor and the transferee was a transfer by way of sale and the amount paid was, in entirety, the consideration therefor.

The Karnataka decision [(1976) Tax LR 524 (Karn)] has been **affirmed** by the Supreme Court in *Vijaya Bank Ltd. v. Addl. CIT* [(1991) 187 ITR 541 (SC)]. The Supreme Court has held that a claim for deduction against securities could be sustained only when the assessee was in a position to show that any reasonable expenditure had been incurred for realising the interest on securities. It has, further, been held that where the assessee purchased securities at a price determined with reference to their actual value as well as the interest accrued thereon till the date of purchase, the entire price paid for them would be in the nature of capital outlay and no part of it could be set off as an expenditure against the income by way of interest received on the securities. Subsequently, when these securities yielded income by way of interest, such income attracted section 18.

Where the Department had brought to tax the amounts of interest on Government securities received by the assessee-bank under section 28 and not under section 18 right from the inception, the Supreme Court ruling [187 ITR 541 (SC)] cannot have application to the facts of such a case [*American Express International Banking Corporation v. CIT*, (2002) 258 ITR 601, 616 (Bom)].

On the question of allowability of collection charges under section 19(i), reference may also be made to *CIT v. Trustees of H.E.H. the Nizam's Miscellaneous Trust* [(1986) 160 ITR 253 (AP)]. Also see, *CIT v. Trustees of HEH Nizam's Miscellaneous Trust*, (2002) 245 ITR 6, 7 (SC).

Interest on capital borrowed for purchasing Government securities, etc., yielding the income.—An assessee was entitled to deduct, from out of interest-income on Government securities, etc., the amount of interest payable on moneys borrowed for the purpose of investment in purchasing the Government securities, etc. For claiming such deduction, the interest sought to be deducted must relate to money borrowed directly and solely for the purpose of investment in the income-yielding securities, and not for some other business where investment in such securities was only incidental or under some legal obligation [see, *United Commercial Bank Ltd. v. CIT*, (1953) 24 ITR 425 (Cal); *Indian Steamship Co. Ltd. v. CIT*, (1953) 24 ITR 448 (Cal)]. At the same time, the claim for deduction of such interest was not inadmissible merely because it was not made at a stage earlier than the Tribunal appeal [*Chotanagpur Banking Association Ltd. v. CIT*, (1956) 29 ITR 150 (Pat)].

“Moneys borrowed”, what it connoted in section 19(ii).—The phrase “moneys borrowed” used in section 19(ii) was used in its ordinary sense known to the commercial world. There was no justification for expanding its meaning to include transactions which were not intrinsically of that nature. The money must belong to the person who lent the same to a borrower, on an understanding as to the time when it was to be returned and on payment of interest. There must be a borrower and a lender and there must be a real borrowing in the legal sense of the word [*Inland Revenue Commissioners v. Rowntree & Co. Ltd.*, (1948) 1 All ER 482 (CA); *Addl. CIT v. U.P. Co-operative Union Ltd.*, (1978) 114 ITR 850, 852 (All)].

In the U.P. Co-operative case, the bye-laws of the Co-operative required its employees to make some contribution towards provident fund. The co-operative society had to make investments and was obliged to keep funds invested in Government securities. The interest earned by the investment of the provident fund amount in Government securities was credited by the assessee in the individual account of the employees provident funds proportionately. The Society claimed that the interest payable by it to its employees on the balance of their provident fund accounts was deductible under section 19(ii) in its assessment. It was held that the amounts to the credit of the employees were not “moneys borrowed” by the society and it could not claim deduction of interest thereon.

Nexus between the borrowing and the investment in securities must be established.—In order to claim deduction under section 19(ii), it must be shown that the moneys were borrowed for the purpose of investment in securities and the interest paid, in respect to which deduction was claimed, was relatable to such borrowing. If no such link or nexus was established, interest could not be allowed under section 19(ii). The finding as to the existence of such link or nexus is a finding of fact [*Gujarat Co-operative Housing Finance Society Ltd. v. CIT*, (1980) 126 ITR 387 (Guj)].

Where such nexus was established, deduction under section 19(ii) for the interest on borrowings was still allowable even though there was no income from such securities in that year [*CIT v. Straw Products Ltd.*, (1987) 165 ITR 225 (Cal)].

Interest on money borrowed for purchase of tax-free securities—whether deduction allowable for?—There was divergence of opinion between different High Courts on the point. The Madras High Court in *CIT v. Madras Provincial Co-operative Bank Ltd.* [(1942) 10 ITR 490], the Bombay High Court in *Broach Co-operative Bank Ltd. v. CIT* [(1949) 17 ITR 489] and the Calcutta High Court in *United Commercial Bank Ltd. v. CIT* [(1953) 24 ITR 425] considered the then provisions of section 8 and held that an assessee borrowing money for purchase of tax-free securities was not entitled to claim any deduction for the amount payable by him as interest on such borrowed money. On the other hand, the Nagpur High Court in *Central Provinces and Berar Provincial Co-operative Bank Ltd. v. CIT* [(1946) 14 ITR 479] and the Madras High Court in *Tiruchi Varthaga Sangam Bank Ltd. v. CIT* [(1963) 48 ITR 763] held that such interest was an allowable deduction.

As pointed out by the Allahabad High Court in *CIT v. Radha Swami Bank* [(1972) 85 ITR 136, 142], the principle enunciated by the Nagpur and Madras High Courts was available only where the taxable securities and the tax-free securities were assets of a single indivisible trading or investment activity. This principle did not operate where the money was borrowed and the expenditure was incurred specifically in relation to tax-free securities.

The position, in this regard, under the provisions of the 1961 Act has been enunciated by the Allahabad High Court in *CIT v. Radha Swami Bank* [(1972) 85 ITR 136, 144] observing: “...section 18 is not a charging section...when considering the income from different sources which falls to be considered under the head ‘Interest on securities’, sections 18 to 21 must be construed in their fullest natural comprehension...sections 19 and 20 must be applied in relation to the entire indivisible activity of which both taxable and tax-free securities form part. There is no room for declining to deduct that part of the expenditure which can, by apportionment, be said to relate to tax-free securities” [Cf. *CIT v. Indian Bank Ltd.*, (1965) 56 ITR 77 (SC)].

Whether interest from securities might result in a negative income?—So far as the provisions of section 8 of the 1922 Act were concerned, there was no valid reason why an assessee while paying no tax to the State on a particular item of income should yet receive from the State credit for the expenditure incurred for earning that income [*United Commercial Bank Ltd. v. CIT*, (1953) 24 ITR 425 (Cal)]. On similar reasoning, it seems that interest on borrowed capital may, at the most, be allowable as deduction to the extent of the yield on the securities purchased with the borrowed amount of money. There would, therefore, be no negative result under the head “Interest on securities” [see, *Seth Ram Gopal Mohta v. CIT*, (1966) 61 ITR 303 (Pun)].

It may be noted that the frame of section 19 of the 1961 Act was a little different from that of section 8 of the 1922 Act. Section 19 allowed deduction in computing the income chargeable under the head “Interest on securities” of the following amounts:

- (i) any reasonable sum expended by the assessee for the purpose of realising such interest; and
- (ii) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee.

No conditions were attached to these deductions. It, therefore, seems that if the deductions result in a negative figure of income, the computation would still hold good and take its own course.

The deductions that might be made in case of banking companies, however, follow the provisions of section 20.

Straight deduction under section 80L.—Section 80L grants straight deduction to the amount of interest on Central and State Government securities on conditions specified in that section.

Omitted section 20.—Section 20, prior to its omission by the Finance Act, 1988 (26 of 1988), with effect from 1-4-1989, stood as follows:—

‘S. 20. Deductions from interest on securities in the case of a banking company.—(1) In the case of a banking company—

- (i) the sum to be regarded as a sum reasonably expended for the purpose referred to in clause (i) of section 19 shall be an amount bearing to the aggregate of its expenses as are admissible under the provisions of sections 30, 31, 36 and 37 [other than ²[clauses (iii), (vi), (vii) and (viii)]] of sub-section (1) of section 36] the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 bear to the gross receipts of the company from all sources which are included in the profit and loss account of the company;

2. Subs. for “clauses (iii), (vi) and (vii)” by the Finance Act, 1979 (21 of 1979), s. 22(2)(a) (w. e. f. 1-4-1980).

- (ii) the amount to be regarded as interest payable on moneys borrowed for the purpose referred to in clause (ii) of section 19 shall be an amount which bears to the amount of interest payable on all moneys borrowed by the company the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source)
- (iii) chargeable to income-tax under section 18 bear to the gross receipts from all sources which are included in the profit and loss account of the company.

(2) The expenses deducted under clauses (i) and (ii) of sub-section (1) shall not again form part of the deductions admissible under sections 30 to 37 for the purposes of computing the income of the company under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this section, "moneys borrowed" includes moneys received by way of deposits.

The above section 20 remained in operation for assessment years 1962-63 to 1988-89. The annotations given hereunder relates to such omitted section 20.

Corresponding provisions.—Section 20 corresponded to the *Explanation* to section 8 of the 1922 Act. The legislative amendment to section 20(1)(i) of the 1961 Act was of a consequential nature.

Apportionment of expenditure in the case of banking companies.—From its very nature of business, a banking company earns income which is chargeable to tax under different heads. In the course of carrying on its business, a banking company has necessarily to make investment in holding Government securities. While income earned by it has, for tax purposes, to be allocated under proper heads with reference to their different sources, the expenditure is common and cannot be so allocated. Section 20, therefore, enacted a rule, which, of course, was artificial, to apportion the common expenditure allowable under sections 30 [rent, rates, tax, repairs and insurance for buildings], 31 [repair and insurance of machinery, plant and furniture], 36 [insurance premium, bonus or commission to employees, for and from assessment year 1981-82 salary paid to certain disabled employees for any period of employment before 1-3-1984, contributions towards recognised provident funds or **approved** superannuation funds or gratuity funds, special reserve for long-term finance, family planning expenses, etc.] and 37 [general expenses] into two heads—that allowable under section 19(i) for the purpose of realising "Interest on securities", and that allowable for other types of banking business, etc.,—in proportion to the income earned under these respective heads.

In arithmetical language, the amount allowable under section 19(i), *i.e.*, any reasonable sum expended for the purpose of realising interest on securities was an amount equal to—

$$\text{Aggregate of expenses} \times \frac{\text{Receipt from interest on securities}}{\text{Gross receipts by banking company}}$$

Section 20(1), in its clauses (i) and (ii), enacted a rule to apportion the common expenditure allowable under sections 30, 31, 36 and 37 [other than clauses (iii), (vi), (vii) and (viii) of sub-section (1) of section 36] into two heads, *viz.*, expenses allowable under section 19(i) for the purpose of realising 'Interest on securities' and expenses allowable for other types of banking business in proportion to the income earned under the respective heads. Section 40A(5) is a part of section 40A and section 40A has an overriding effect in the matter of computation of income under the head 'Profits and gains of business or profession'. Therefore, section 40A cannot be read into section 20(1)(i) merely because section 20(1)(i) refers to apportionment of common expenditure allowable, *inter alia*, under sections 36 and 37. While apportioning the expenses deductible from "Interest on securities" in the case of a banking company in terms of section 20(1)(i), the expenses admissible under the provisions of sections 30, 31, 36 and 37 will not be subject to the restrictions imposed under sections 40A(5) and 44C [*Citibank N.A. v. CIT*, (2003) 262 ITR 47, 50, 53, 54 (Bom)].

In *CIT v. Central Bank of India* [(2003) 264 ITR 522, 524-25 (Bom)], it has been held that the Department was not entitled to import the rule of proportionate expenditure and interest contemplated by the then section 20 into section 80M for the assessment year 1970-71.

Where a particular provision in the Act laid a ceiling for allowance of a particular type of expenditure, the ceiling was to be observed even for the purpose of section 20(1)(i). So much as was allowable under section 20(1)(i) shall be allowed thereunder and the balance [after deducting s. 20(1)(i) amount] shall be allowable under the general provision applicable for allowance [see, *Addl. CIT v. Indian Overseas Bank*, (1980) 123 ITR 790 (Mad)]. In that case, the entertainment expenditure allowable under the then section 37(2) was found, on the basis of its total income figure, to be a sum of Rs. 24,763. It was held that out of Rs. 24,763, an amount equal to 10.65 per cent. representing the proportion of interest on securities to the total gross income receipts, *i.e.*, Rs. 2,637 was allowable under section 20(1)(i) from income from "Interest on securities", and the balance amount, Rs. 22,126, was allowable under the then section 37(2).

As regards the interest on capital borrowed for the purpose of investment in the securities or used from out of interest-bearing deposit accounts allowable under section 19(ii), section 20(1)(ii) provided that the total interest payable on all moneys borrowed by or in deposits with the banking company shall similarly be split up in proportion to the gross receipts from interest on securities and the gross receipts from all other sources; and be allocated to these two heads in that proportion.

To express in arithmetical language, the amount allowable under section 19(ii), i.e., interest on borrowings for the purpose of investment in securities was an amount equal to—

$$\frac{\text{Interest payable by the Bank on all its deposits or borrowings}}{\text{Receipts from interest on securities}} \times \frac{\text{Gross receipts of the banking Company}}{\text{Gross receipts of the banking Company}}$$

Section 20(2) provided that the expenses deducted under sections 20(1)(i) and 20(1)(ii) shall not again form part of the deductions by way of business expenditure. Section 40(d) provided that expenses so deducted shall not again be deducted under sections 30 to 39 as business expenditure in the computation of the business income of the banking company [Cf. *Tiruchi Varthaga Sangam Bank Ltd. v. CIT*, (1963) 48 ITR 763 (Mad)].

The rule of apportionment laid down in section 20(1) was consistent with the general principles of commercial accounting [see, *Madras Co-operative Central Land Mortgage Bank Ltd. v. CIT*, (1968) 67 ITR 89, 94, 95 (SC)].

The provisions of the then section 20 have been discussed in *CIT v. South Indian Bank Ltd.* [(2000) 241 ITR 374, 397-98, 398-99 (Ker)]. This Kerala decision [241 ITR 374 (Ker)] has been **affirmed** on the ground that there was no mistake apparent from the record by the Supreme Court in *CIT v. South India Bank Ltd.* [(2001) 249 ITR 304, 305-06 (SC)], without expressing any opinion on the merits of the deduction.

Omitted section 21.—Section 21, prior to its omission by the Finance Act, 1988 (26 of 1988), with effect from 1-4-1989, stood as follows:—

‘S. 21. Amounts not deductible from interest on securities.—Notwithstanding anything contained in sections 19 and 20, any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1-4-1938) 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 shall not be deducted in computing the income chargeable under the head “Interest on securities”.’.

The aforesaid section 21 remained in operation for assessment years 1962-63 to 1988-89. The annotations given hereunder relates to such omitted section 21.

Corresponding provisions.—This section corresponded to the provisions of the first proviso (latter part) to section 8 of the 1922 Act.

Analysis of the overriding provisions.—Section 21 contained provisions which overrode those in sections 19 and 20. The obvious intention for enacting the provisions of section 21 was to counteract the possibility of evasion of tax.

Any interest chargeable under this Act shall not be allowed deduction in computing the income chargeable under the head “Interest on securities” if such interest was payable outside India, unless—

- (i) it was on a loan issued for public subscription before 1-4-1938, or
- (ii) tax at source had been paid, or deducted thereon under the provisions of Chapter XVII-B (sections 192 to 206), or
- (iii) in respect of which there was a person in India who could be treated as a statutory agent under section 163,

notwithstanding that it was otherwise allowable under section 19 or 20. The provisions were in line with those contained in sections 25, 40(a)(i) and 58(1)(a)(ii).

Erstwhile provisions of section 24 of the 1961 Act

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Deductions available up to assessment year 2001-02.—*Repairs and collection of rent.*—As the provision stood up to 31-3-1993, the then section 24(1)(i) of the 1961 Act was sub-divided into two sub-clauses, viz., sub-clause (a) and sub-clause (b). Sub-clause (a) applied where the owner undertook to do repairs and the property might either be occupied by the owner himself or be let out to a tenant. On the other hand, sub-clause (b) applied where the tenant undertook to do repairs and the property remained in the occupation of the tenant. In this regard, it was held that where there was no understanding in the agreement entered into by the assessee and his son to the effect that the tenant was to bear the cost of repairs also, the provisions of section 24(1)(i)(b) of the 1961 Act are not attracted [see, *CIT v. Mehta Harnam Singh*, (2002) 253 ITR 300, 302 (Del)].

The expression “cost of repairs” in both the sub-clauses meant the cost of substantial repairs. In *CIT v. Parbutty Churn Law*, (1965) 57 ITR 609 (Cal), it was held, on facts, that the lessors had undertaken to do substantial repairs and as such provisions similar to sub-clause (a) were applicable. In other words, as soon as it appears that the liability for substantial repairs is undertaken by the landlord, section 24(1)(i)(a) of the 1961 Act is attracted. In the facts of *Magma Leasing Ltd. v. CIT*, (2003) 260 ITR 36, 40-41 (Cal), the liability to repair exterior was upon the lessor-landlord together with the maintenance of the supply lines of electricity, water and sewerage and other essential services in the demised premises, which were integral parts of such premises, as well as of the interior other than those undertaken by the lessee. Such liability was, therefore, a substantial one for which assessee was entitled to get deduction under section 24(1)(i)(a) of the 1961 Act.

From a conjoint reading of sections 22 and 23 of the 1961 Act, it is clear that all deductions allowable under section 24 of the 1961 Act for the purpose of computing the income from house property have to be made after the annual value has been determined under section 23 of the 1961 Act. The income from property, which is chargeable to tax, is income for each previous year and the deductions, which are permissible in the computation of the income, are again deductions which are permissible in each previous year, having reference to the period which is the unit of assessment [*CIT v. J.V. Gupta & Sons*, (2000) 241 ITR 861, 865 (Del)]. In that view of the matter, the Tribunal was held not right in holding that the deduction on account of repairs under section 24 of the 1961 Act should be worked out without taking into consideration the concession in respect of the self-occupied dwelling house under section 23(2)(i) of the 1961 Act for the assessment year 1978-79.

In *Sir Shadi Lal & Sons v. CIT*, (1988) 169 ITR 510, 515 (SC), affirming *Sir Shadi Lal & Sons v. CIT*, (1973) 92 ITR 453 (All), it has been ruled by the Supreme Court that the idea of “repair” may include replacement or even a renewal. But the converse may not be true. All replacements or renewals need not necessarily be “repairs”. In the case of a building, restoration of stability or safety of a subordinate or subsidiary part of it or any portion of it can be considered as repair while the reconstruction of the entirety of the subject-matter may not be so regarded. Their Lordships considered apposite the following observations by Buckley L.J. (as he then was) in *Lurcott v. Wakely & Wheeler*, (1911) 1 KB 905, 923-24 (CA): “Repair” and “renew” are not words expressive of a clear contrast, and ‘repair is restoration by renewal, or replacement of subsidiary parts of a whole. Renewal as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion. These observations have been quoted with approval by their Lordships of the Privy Council in *Rhodesia Railways Ltd. v. I.T. Collector*, (1933) 1 ITR 227, 232 (PC). On facts, the Allahabad High Court [(1973) 92 ITR 453] came to the conclusion that, under the terms of the lease deed, the lessee was saddled with the liability of executing all repairs. So far as the landlord was concerned, the lease deed enjoined on him to carry out major repairs, such as repairs against the collapse of the house, etc. Therefore, it was held that the work undertaken by the landlord to restore the collapse of the premises or work of a like nature was not ‘repairs’ but renewal or reconstruction. That being so, sub-clause (b) was applicable. Affirming the said Allahabad decision [(1973) 92 ITR 453], the Supreme Court has held, on facts, that the tenant has undertaken ‘substantial repairs’ and accordingly the case fell within sub-clause (b) [*Sir Shadi Lal & Sons v. CIT*, (1988) 169 ITR 510, 515 (SC)].

Now coming to the quantum, unless the property was let out with a stipulation that the tenant would undertake to bear the cost of repairs, the amount allowable under sub-clause (a) was an amount equal to 1/6th of the annual value. In case of property let out with a stipulation that the tenant would undertake to bear the cost of repairs, the sum allowable under sub-clause (b) would be the excess of the annual value over the amount of rent payable for a year by the tenant; or a sum equal to 1/6th of the annual value, whichever was less. To take a specific illustration, suppose the rent payable was ₹ 7,200 and the annual value was determined at ₹ 9,000, then the amount deductible from ₹ 9,000 would be ₹ 9,000 (-) ₹ 7,200, i.e., ₹ 1,800 or 1/6th of ₹ 9,000, i.e., ₹ 1,500,

whichever was less; therefore ₹ 1,500. The deduction under this clause was allowable irrespective of the fact whether any amount was actually expended on the repairs or not [*Gulab Singh & Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537 (Delhi)], as also irrespective of the fact whether the property was self-occupied or let out. To put it differently, a reading of section 24(1)(i) of the 1961 Act made it clear that a fixed allowance of a sum equal to $\frac{1}{6}$ th of the annual value was to be allowed where the property was either, (a) in the occupation of the owner, or (b) it was let out to a tenant and the owner had undertaken to bear the cost of repairs. In case the tenant undertook to bear the cost of repairs, the excess of the annual value over the rent payable for a year by the tenant was deductible, subject to a ceiling of $\frac{1}{6}$ th of the annual value [*CIT v. Raipur Flour Mills (P.) Ltd.*, (1984) 145 ITR 205, 207 (MP)]. Also see, *CIT v. Raipur Flour Mills (P.) Ltd.*, (1989) 177 ITR 352 (MP). In *CIT v. Tamil Nadu Small Industries Development Corporation Ltd.*, (1995) 211 ITR 550, 551-52 (Mad), the Tribunal was held right in holding that the income from letting out the Service Corporation should be assessed as income from property and the assessee was entitled to the allowance at $\frac{1}{6}$ th of the annual letting value towards the payers.

The 'annual value' in section 24(1)(i) of the 1961 Act refers to the annual value determined under section 23(1) of the 1961 Act read with the first proviso thereto without resorting to the second proviso thereto [*Addl. CIT v. Instrumentation Ltd.*, (1986) 160 ITR 689 (Raj)]. In *CIT v. Richram Dharmasala Trust Estate*, (1992) 197 ITR 132, 134 (Ori), it has been held that the method of determination of the annual value of house property has been statutorily prescribed in section 23 of the 1961 Act. Since it constitutes the annual rent received or receivable by the owner in respect of the property let, the deductions for repairs is to be made from the annual rent received or receivable. Therefore, computation has to be made before the expenses are adjusted from the rent received. The statutory deductions embodied in section 24 of the 1961 Act are to be first considered and thereafter deductions for the expenses required for earning the rental income are to be made.

Up to assessment year 1992-93, allowance for collection charges was also on the basis of actual expenditure incurred, but **section 24(1)(viii) of the 1961 Act** fixed a ceiling of 6% of the annual value of the property therefor [see, *Maharajadhiraj of Darbhanga v. CIT*, (1930) 5 ITC 35 (Pat)]. Thus, where collection charges were not spent by the assessee nor were they spent on assessee's behalf through his agent, the assessee was not entitled to claim any deduction on that account [*Addl. CIT v. Maharaj Kumar Vikramaditya Singh*, (1973) 92 ITR 553 (J&K)]. In *CIT v. Orient Beverages Ltd.*, (1993) 203 ITR 559, 561 (Cal), it has been held that so long as the expenditure was within the ceiling prescribed by section 24(1)(viii) of the 1961 Act, there was no reason to disallow any part of such expenditure, whether such expenditure was made by appointing any employee to collect the rent, or by paying commission to the broker in the induction of a tenant or for securing fair and reasonable rent or normal rent in respect of the house.

In *CIT v. Hindustan Times Ltd.*, (1988) 169 ITR 145 (Del), the assessee paid a special commission to a third party. The same was found to be paid in order to enable the assessee to collect rent. It was, on facts, held that the commission so paid was allowable as a permissible deduction under section 24(1)(viii) of the 1961 Act.

In *CIT v. Sarabhai Pvt. Ltd.*, (2003) 263 ITR 197, 199, 206 (Guj), the Tribunal was held right in allowing collection charges amounting to 6% of the annual letting value under the head 'Income from house property' for the assessment years 1972-73 and 1973-74.

As a result of the **substitution (w. e. f. 1-4-1993) of section 24(1)(i) of the 1961 Act and omission (w. e. f. 1-4-1993) of section 24(1)(viii) of the 1961 Act by the Finance Act, 1992** (18 of 1992), a composite deduction, both for repairs of the house property and for collection of rent, of an amount equal to $\frac{1}{5}$ th (20%) of the 'annual value' of the house property has been provided for, effectively for assessment years 1993-94 to 1998-99.

In *Pawha Builders (P.) Ltd. v. CIT*, (2005) 272 ITR 407 (Del), in a collaboration agreement entered into between the owners of property and the assessee (builder), it was agreed that after the superstructure of the entire building on the said plot had been completed in accordance with the sanctioned building plans, property would be given on rent and rent proceeds be shared by owners and assessee in 70:30 from the date of renting of property. It was held that since assessee was not an absolute owner of the property, thus, assessee would be eligible for a deduction of 20% on 30% of rent which it was actually receiving.

Further, as a result of the **amendment (w. e. f. 1-4-1999) of section 24(1)(i) of the 1961 Act by the Finance (No. 2) Act, 1998** (21 of 1998), the deduction for repairs of the house property and for collection of rent therefrom has been raised to an amount equal to $\frac{1}{4}$ th (25%) of the 'annual value' of the house property in place of $\frac{1}{5}$ th (20%) of the 'annual value' of the house property. Such enhancement was effective for assessment years 1999-2000 to 2001-02. Reference may be made to *Hira Lal & Sons v. CIT*, (2007) 160 Taxman 112 (All).

Insurance premium.—Whatever is actually paid, if any, to insure the property against risk of damage or destruction is allowable as a deduction under the then **section 24(1)(ii) of the 1961 Act** [*Liquidator, Mahmudabad Properties Ltd. v. CIT*, (1972) 83 ITR 470, 476, 483 (Cal); *Gulab Singh & Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537, 545 (Delhi)].

In *CIT v. Smt. Laxmi Devi Jain*, (1996) 217 ITR 840, 842 (All) [judgment delivered on 26-9-1995], the Tribunal was held legally correct in holding that the assessee's 1/4th share in the composition fee of ₹ 53,179 was an admissible deduction under section 24(1)(ii) of the 1961 Act. **However**, in a subsequent judgment delivered on 16-11-1995, it has been held that the composition fee was nothing but a sort of penalty imposed for non-compliance with the terms of the lease. Such penalty was not paid to cover the risk of damage or destruction. Therefore, the Tribunal was held not legally right in holding that the amount of composition fee was deductible under section 24(1)(ii) of the 1961 Act [*CIT v. Motilal Jain*, (1996) 218 ITR 483, 485 (All), a case relating to another co-sharer].

Interest on mortgage or other capital charge.—The deduction, under section 24(1)(iii) of the 1961 Act, could be claimed if the property was subject to a mortgage or other capital charge and any interest on such mortgage or charge had been incurred. In other words, the purpose for which the mortgage was created was immaterial for the purpose of allowability of deduction under the then section 24(1)(iii) of the 1961 Act [Cf. *Ruby Rubber Works Ltd. v. Ag. ITO*, (1983) 139 ITR 218 (Ker)].

In *CIT v. Express Newspapers Ltd.*, (1980) 124 ITR 117 (Mad), **SLP dismissed**: (1985) 155 ITR (St.) 5 (SC), the assessee borrowed money on executing equitable mortgage of certain properties and paid interest thereon. The claim in respect of such interest was accepted by the revenue under section 24(1)(iii) of the 1961 Act. As the money so borrowed was, indisputably, used by the assessee for the purposes of his business, he also claimed deduction in respect of such interest under section 36(1)(iii) of the 1961 Act. This claim was negated by the ITO and the AAC. But the Tribunal accepted the same. Affirming the view of the Tribunal, it was held by the High Court that the assessee was entitled to deduction under section 36(1)(iii) of the 1961 Act as well. This was so held on the ground that the allowability of the expenditure had to be considered in the light of the respective provisions dealing with the distinct heads of income and there was no provision against double deduction in such a situation.

In *Gulab Singh & Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537, 555 (Delhi), enhanced premium payable to the Government under a lease agreement was held to be a capital charge. Hence, interest on such enhanced premium was held allowable under provisions similar to clause (iii) of section 24(1) of the 1961 Act.

Where three immovable properties formed part of the security under two indentures of mortgage, the security was one and indivisible and it was open to the mortgagee to proceed against anyone for realisation of his debt. If any one or more of the properties was assessable under section 22 of the 1961 Act, the owner could take into account as a permissible deduction the whole amount of interest payable and not only a proportionate (to the property assessable under section 22 of the 1961 Act) amount of such interest [*CIT v. D.L. Kanhere*, (1973) 92 ITR 535, 539-40 (Bom)]. **But**, in *Gujarat Ginning and Mfg. Co. Ltd. v. CIT*, (1977) 107 ITR 590 (Guj), where the interest was paid on a joint mortgage of house property as well as machinery thereon, it was held that an apportionment of the interest between the house property and the machinery had to be made and the deduction allowable under section 24(1)(iii) of the 1961 Act had to be limited to that portion of interest which pertained to the house property.

By the Finance Act, 1968 (19 of 1968), section 24(1)(iii) of the 1961 Act was omitted (w. e. f. 1-4-1969).

Annual charge.—Prior to the enact of the Income-tax Act, 1961, in simpler language, an annual charge, in this context, means an annual payment payable by the owner to a third person, which is secured by creation of a charge on the property under assessment. This connotes something more than an annual payment; both (i) liability to pay and (ii) a charge on the house property for the discharge of that liability, are involved in the conception of annual charge [*Veerappa Chettiar v. CIT*, (1959) 35 ITR 322 (Mad)]. The liability to pay may be in whatever kind of instalments, e.g., annual, monthly, etc. A payment is “annual” if it has the quality of recurrence in different years, although it might not be in every one of a succession of years. It is not necessary that its quantum should be fixed by reference to a whole year [*CIT v. State Bank of India*, (1957) 31 ITR 545 (Cal)]. If a payment recurs over a long period of years, it can be called an annually recurring payment and notwithstanding the fact that the mode of payment is monthly or the intervening period between the two payments is less than a year. Thus, if any amount is payable monthly and such payment is to recur year after year the liability must be treated as one for making an annual payment and the property which is charged with such payment must be said to be charged with an annual charge [*CIT v. S.B. Bakshi Dalip Singh*, (1980) 122 ITR 96, 103 (Bom)]. Also see, *In re, Janes' Settlement: Wasmuth v. Janes*, (1918) 2 Ch 54 (Ch D); *Ryall v. Honeywill*, (1923) 2 KB 447 (KB). The test to be applied is, whether the property is subject to a valid and legal charge which could be enforced in a court of law under which the assessee was bound to pay a certain amount recurring annually [*Prince Khanderao Gaekwar v. CIT*, (1948) 16 ITR 294 (Bom)]. Also see, *S. Kartar Singh v. CIT*, (1969) 73 ITR 438 (Delhi). Under the then existing law, where a *karta* was a party to the deed of separation with his first wife agreeing to pay ₹ 6,000 per annum to the latter, and he secured the payment by a charge on the family property, it was held that the family was entitled to deduct ₹ 6,000 under these provisions as an annual charge [*Kunwar Krishna Chandra v. CIT*, (1961) 42 ITR 137 (All)]. Maintenance allowance

payable to widowed mother under a decree of a court which created charge on the family property for its payment was held allowable as annual charge under the then existing provisions [*CIT v. S.N. Bhayya*, (1949) 17 ITR 515 (Bom)]. **But** a direction to pay an amount out of the entire income of the trust property held by the trustees for the uses and intents and purposes as specified in the deed, the quantum of which is left to be determined at the discretion of the trustees does not have the effect of making it a charge on any part of the trust property [*Trustees of Chaturbhuj Raghavji Trust v. CIT*, (1963) 50 ITR 693 (Bom)].

Under section 9(1)(iv) of the 1922 Act, as it stood before 1-4-1950, municipal taxes were held to be an 'annual charge' and therefore deductible under these provisions [*CIT v. Gappumal Kanhaiya Lal*, (1950) 18 ITR 584 (SC), **affirming** (1945) 13 ITR 210 (All); *New Piece Goods Bazar Co. Ltd. v. CIT*, (1950) 18 ITR 516 (SC), **reversing** (1947) 15 ITR 319 (Bom), and **disapproving** *Mamad Keyi v. CIT*, (1943) 11 ITR 484 (Mad) as well as *CIT v. Mahomedbhoy Rowji*, (1943) 11 ITR 320 (Bom)]. After the amendment in 1950 of section 9(1) by the addition of the *Explanation*, sums paid as municipal property tax and immovable property tax were held not permissible deductions [*Calcutta National Bank Ltd. v. CIT*, (1953) 24 ITR 280 (Cal)]. Although the rates under the Ceylon Municipal Councils Ordinance were payable annually, they were not charged on the house properties and, consequently, they were held not to amount to annual charge deductible under these provisions [*A.V.R.A. Veerappa Chettiar v. CIT*, (1959) 35 ITR 322 (Mad)]. It may be noted that taxes levied by a local authority in respect of the property in the occupation of a tenant, etc., are allowable under the first proviso to section 23(1) of the 1961 Act.

"Annual charge", according to **section 27(iv) of the 1961 Act [as it stood up to 31-3-2002]**, meant a charge to secure an annual liability, but **did not include** any tax in respect of the property or its income imposed by a local authority or the Government (whether Central or State). This definition has been taken from the decision of the Supreme Court in *New Piece Goods Bazar Co. Ltd. v. CIT*, (1950) 18 ITR 516 (SC).

Under the law, as it stands **with effect from 1-4-1969**, i.e., for and from assessment year 1969-70, an annual charge created by the assessee voluntarily does not go in for deduction under section 24(1)(iv) of the 1961 Act [*Clive Buildings (Calcutta) Ltd. v. CIT*, (1989) 175 ITR 515, 518 (Cal)]. Merely because the charge related to a secured debt, does not make it an involuntary charge. The onus is on the assessee to prove that the charge was created involuntarily [*Clive Buildings (Calcutta) Ltd. v. CIT*, (1989) 175 ITR 515, 518 (Cal)]. Thus, the amendment (w. e. f. 1-4-1969) of section 24(1)(iv) of the 1961 Act by the Finance Act, 1968 (19 of 1968) indicates that a charge voluntarily created would stand on a different footing from super-imposed charges [*Moti Lal Chhadami Lal Jain v. CIT*, (1991) 190 ITR 1, 11 (SC)].

The word 'voluntarily' in section 24(1)(iv) of the 1961 Act cannot be understood as signifying a meaning opposite to the words 'by operation of law'. If that was the intention of Parliament, it would have used the words 'by act of parties', which is the expression generally understood as the opposite of the words 'by operation of law'. Here, the word 'voluntarily' must be understood as distinct from, and as opposed to, the word 'involuntarily'. The word 'involuntarily' means without there being any option, i.e., under an enforceable obligation. Thus, where a person creates an annual charge to meet an existing, genuine, legal or contractual obligation, it would not be a case of creating a charge voluntarily [*CIT v. Rajah Dhanrajgiriji*, (1985) 154 ITR 719, 722 (AP), **followed in** *CIT v. Shri Raja Dhanraj Girji*, (1999) 152 Taxation 706, 707 (Bom)]. In that case, the assessee created a mortgage in respect of a house property under the pressure of a court sale. Further, an equitable mortgage was created because the creditor demanded additional security. As to the allowability of the interest paid on these mortgages, it was held that such interest was deductible under section 24(1)(iv) of the 1961 Act because it could not be said that the charge was created by the assessee 'voluntarily'.

A charge which is (1) either not created by the assessee or (2) which is not created by the assessee voluntarily in the sense that it is created or thrust upon the assessee either by operation of law or by a decree of a court or by the act of his predecessor-in-title or by reason of the property coming into his hands with an existing or overriding charge will have to be treated as an 'involuntary charge' for the purpose of section 24(1)(iv) of the 1961 Act. The language of section 24(1)(iv) of the 1961 Act incorporates the concept of a charge being voluntarily created by the assessee as against a charge which comes into being by operation of law or by virtue of an order of the court or by the act of parties other than the assessee such as when the assessee gets a property already subject to a charge. Only those annual charges which are not created by the assessee voluntarily in this sense, are capable of being deducted from the income from house property [*CIT v. Central Bank Executor and Trustee Co. Ltd.*, (1993) 203 ITR 666, 671, 672 (Bom)]. The question whether the charge was voluntary or involuntary will have to be decided with reference to the acts relating to the creation of such charge. If the charge is created voluntarily, it remains so, whether it is created before the amendment or after the amendment. If the benefit of the deduction is taken away as a result of the amendment, then from the date of the amendment such a deduction cannot be allowed [*CIT v. Tarachand Kalyanji*, (1993) 204 ITR 43, 46 (Bom)].

Earlier to 1-4-1969, i.e., up to assessment year 1968-69, there was no such condition and even a voluntarily created annual charge was to qualify for deduction if it were not a capital charge. The cases decided under the then

existing law are to be read subject to this change in law. In other words, the language of section 24(1)(iv) of the 1961 Act as it stood before amendment by the Finance Act, 1968 (19 of 1968), with effect from 1-4-1969, permitted an assessee to claim a deduction from the house property income of any amount that was an annual charge on the property, whatever might have been the purpose for which the charge was created and also irrespective of the fact whether the charge was created voluntarily by the assessee or whether it was imposed by him as a result of some legal obligation otherwise enforceable on him [*CIT v. Dr. Rameshwar Lal Pahwa*, (1980) 123 ITR 681 (Delhi)]. In *CIT v. P.R. Thakkar*, (1988) 170 ITR 224 (Bom), under a deed executed by the assessee, he was to pay to his wife an annual sum out of his one-half share in the net income of certain house properties. It was held that the amount was deductible as 'annual charge' under section 24(1)(iv) of the 1961 Act, as it stood prior to its amendment by the Finance Act, 1968 (19 of 1968), with effect from 1-4-1969. In a suit instituted by the wife against her husband, a consent decree was passed by which an order for judicial separation was made and the husband was directed to pay ₹ 800 per month as alimony to his wife. Three years later, the husband executed a deed of charge on two of his properties securing the payment. In the husband's assessment in respect of income from those two properties, it was held that the sum of ₹ 9,600 was an admissible deduction even though the charge was created voluntarily and was not an overriding charge diverting the amount from the husband assessee before it could become his income [*CIT v. State Bank of India*, (1957) 31 ITR 545 (Cal)].

Any expenditure incurred by an owner on itself or himself or any obligation of the owner to incur certain expenditure on itself or himself could not form part of any 'annual charge' on the property because, in such a case, the assessee is the owner of the property himself or itself. In that view of the matter, the expenses incurred out of the income of a property vested in a deity on the *pūja* of the deity itself cannot be termed as 'annual charge' on the property. However, expenses incurred on the *pūja* of another deity do constitute an annual charge within the meaning of section 24(1)(iv) of the 1961 Act [*CIT v. Saradeswar Siva Linga*, (1983) 140 ITR 953 (Cal)].

Thus, the allowance enjoined in section 24(1)(iv) of the 1961 Act is admissible, **for and from assessment years 1969-70**, on fulfilment of the following conditions:

- (a) the property is subject to an annual charge on the house property that is providing income;
- (b) the said charge is not created by the assessee voluntarily; and
- (c) it is not a capital charge.

In the facts of *CIT v. Satyanarayan Sikaria*, (1999) 238 ITR 855, 859 (Gauh), on a total partition of the HUF, a life interest was created in favour of the *karta* and it was provided that during the subsistence of such life interest, *karta* had to pay annual charge to his sons and wife. It has been held that the amounts so paid by the *karta* were not allowable, for assessment year 1988-89, as deduction under section 24(1)(iv) of the 1961 Act because the creation of the charge was voluntary.

In *Smt. Sunandamma v. CIT*, (1987) 164 ITR 446 (Karn), the interest payable on estate duty has been held not to be an 'annual charge' within the meaning of section 24(1)(iv) read with section 27(iv) of the 1961 Act. Similarly, interest paid on a loan taken on the security of the house property for payment of the estate duty has been held not deductible in computing 'Income from house property' [*CIT v. Central Bank Executor and Trustee Co. Ltd.*, (1993) 203 ITR 666, 668, 672 (Bom)]. In *CIT v. Tarachand Kalyanji*, (1993) 204 ITR 43, 45-46 (Bom), interest on mortgage of the house property created for raising money for paying excess profits tax has been held not a permissible deduction for and from assessment year 1969-70, even though the mortgage was created prior to 1-4-1969.

Where an amount is paid by the assessee to his mother as maintenance allowance as per the provisions contained in a partition deed, such amount cannot be allowed as a deduction under section 24(1)(iv) of the 1961 Act because such charge has been created voluntarily [*CIT v. Sohanlal*, (2002) 257 ITR 242, 248-49 (Del)].

The enhanced remuneration fixed by court in the year 1995 should be treated to be the remuneration payable to the *shebait*s in accordance with law notwithstanding the fact that the amount was higher than the one fixed by the settlor as it was enhanced by virtue of a judicial order in a suit for administration and it could not be treated as an 'annual charge' within the meaning of section 24(1)(iv) of the 1961 Act and, thus, held not deductible [*Estate of Sree Sree Radha Kishan Jew v. CIT*, (2012) 347 ITR 299 (Cal)].

Whether the Tribunal was justified in law in holding that the composition fee payable to the DDA is allowable deduction under section 24(1)(iv) of the 1961 Act is a referable question of law [*CIT v. Rajdhani Cold Storage Pvt. Ltd.*, (2000) 245 ITR 855 (Del)].

An annual charge which is a capital charge is an exception, and no deduction can be claimed in respect thereof as specifically mentioned in section 24(1)(iv) of the 1961 Act. "Capital charge" is defined in section 27(v) [as it stood up to 31-3-2002] to mean a charge to secure the discharge of a liability of a capital nature. The expression "capital charge" used in section 24(1)(iv) of the 1961 Act does not connote a charge on the

capital, i.e., the property assessed, but is “a charge created for the realisation of a capital sum, i.e., a charge to secure the discharge of a liability of a capital nature [see, *New Piece Goods Bazar Co. Ltd. v. CIT*, (1950) 18 ITR 516, 518-19 (SC)]. The terms “annual charge” and “capital charge” used in these provisions are not really restricted to “charges” proper as defined in section 100 of the Transfer of Property Act, 1882 (4 of 1882) [*Gulab Singh and Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537, 554 (Delhi)].

Expenditure incurred by the assessee on the marriage of his sister out of the income of the property inherited by the assessee under the terms of a will has been held to be a capital charge not deductible under section 24(1)(iv) of the 1961 Act [*CIT v. P. Satish Pai*, (1986) 162 ITR 457 (Karn)].

In *CIT v. Smt. Indramani Devi Singhania*, (1991) 189 ITR 124, 126 (All), interest paid by the owner of a property on the mortgage executed by him, even though in the interest of his business in respect of that property is not deductible under section 24(1)(iv) of the 1961 Act, for and from assessment year 1969-70. This view has been **followed in** *CIT v. Murlidhar Kanodia & Sons*, (1993) 204 ITR 760, 762 (All)]. In *K. Govinda Bhatt v. CIT*, (1999) 235 ITR 528, 530, 532-33 (Mad), the interest paid on a mortgage to secure unpaid consideration for the purchase of the property has been held not deductible under section 24(1)(iv) of the 1961 Act for the assessment year 1976-77.

Reference may also be made to *CIT v. Jagath Enterprises (P.) Ltd.*, (2008) 301 ITR 60 (Mad).

Ground rent.—The income from property, which is chargeable to tax, is income for each previous year and the deductions, which are permissible in the computation of the income, are again deductions which are permissible in each previous year, having reference to the period which is the unit of assessment. The amount is claimable if it is payable, irrespective of the fact whether it has actually been paid or not. But the extent of the allowance would be only such amount as would pertain to the period of assessment. Even if arrears for more than the period of assessment have actually been paid during the period, only so much thereof that relate to the period of assessment are deductible [*CIT v. Abdul Hussein Essaji Arsiwalla*, (1968) 69 ITR 38 (Bom); *Gulab Singh & Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537 (Delhi)]. If, however, the land whereupon the buildings stand is owned by the owner of the buildings and no ground rent is payable therefor, no deduction on this account can be claimed. But if, on the other hand, the land belongs to somebody else and the assessee has to pay a ground rent in respect thereof, such ground rent and other deductions paid or payable, to the extent of and in so far as it relates to the period of assessment, has to be deducted from the annual value for computing the taxable income from the property.

In *P.N. Sikand v. CIT*, (1981) 131 ITR 9 (Del), charges paid by the lessee of the land to the lessor for regularising the use were held allowable as ‘ground rent’.

Interest on borrowed capital.—It is quite clear from a plain reading of **clause (vi) of section 24(1) of the 1961 Act** that an allowance permitted under this clause is clearly in respect of interest payable on borrowed capital where the property has been acquired, constructed, repaired, renewed or reconstructed with such borrowed capital. Thus, interest paid towards borrowed capital used in construction of property would be allowable as deduction under section 24(1)(vi) of the 1961 Act but not under section 24(1)(iv) of the 1961 Act [*CIT v. Raghubir Saran*, (2005) 145 Taxman 364 (All); *CIT v. Raghubir Saran*, (2005) 145 Taxman 439 (All)].

Under the provisions of clause (vi), it is not necessary for allowance of interest that the borrowed capital should be secured by a mortgage on the property in question. All that is necessary to be proved as a fact is that the borrowed amount was utilised for acquiring, constructing, repairing, renewing or renovating the property concerned. Nevertheless, if there was no nexus or connection between the capital borrowed for construction of the building and the interest paid or payable, the interest cannot be allowed deduction [*Rajkot Seeds, Oil & Bullion Merchants Association Ltd. v. CIT*, (1965) 56 ITR 685 (Guj)]. If, however, the income from a particular property enjoyed exemption and could not be brought into computation for tax purposes or for determining the rate of tax, there could be no question or occasion for deducting interest on borrowed capital [*Dalmia Jain & Co. Ltd. v. CIT*, (1967) 65 ITR 408 (Pat); *Indian City Properties Ltd. v. CIT*, (1965) 55 ITR 262 (Cal)]. In *K. Govinda Bhatt v. CIT*, (1999) 235 ITR 528, 530, 533 (Mad), the interest paid on a mortgage to secure unpaid consideration for the purchase of the property has been held not allowable as a deduction under section 24(1)(vi) of the 1961 Act in computing the income from property for the assessment year 1976-77. This is so because the assessee could not execute the mortgage deed prior to the execution of the sale deed. It was only after the execution of the sale deed that the assessee would become the owner of the property and only thereafter, he could mortgage the property. Therefore, in the instant case, it could not be said that the property was mortgaged for the purpose of acquiring the said property with borrowed capital. **However**, in *CIT v. Haryana Television Ltd.*, (2016) 65 taxmann.com 72 (Punj), assessee had mortgaged its property which created a charge over assets of the company and the said liability continued. Subsequently, property of the assessee stood transferred to it and as a condition for acquiring the said property, assessee undertook to pay loan of financial institutions. In such circumstances, it has been held that since the liability undertaken by the assessee for payment of loan and interest thereon was for acquiring property of the

company, there was a direct nexus between the loan liability and the acquisition of property and, therefore, amount of interest payable against said borrowing was deductible.

It is explicit that the words "borrowed capital" in law require the relationship of a borrower and a lender. In other words, the relationship of borrower and lender must come into existence before it can be said that any amount, capital or any other money, is borrowed by one person from another and there must be a real transaction of borrowing and lending in order to amount to any borrowing [see, *CIT v. Rajkot Seeds, Oil & Bullion Merchants Association Ltd.*, (1975) 101 ITR 748 (Guj); *CIT v. Four Fields (P.) Ltd.*, (1998) 231 ITR 262, 268 (Punj); *Commrs. of Int. Rev. v. Port of London Authority*, (1923) AC 507 (HL); *Commrs. of Int. Rev. v. Rowntree & Co. Ltd.*, (1948) 1 All ER 482 (CA); *In re, HPC Productions Ltd.*, (1962) 2 WLR 51]. Allotment of property on instalment basis did give rise to relationship of borrower and lender [*CIT v. Master Sukhwant Singh*, (2006) 155 Taxman 153 (Punj)]. In the facts of *CIT v. Rajkot Seeds, Oil & Bullion Merchants Association Ltd.*, (1975) 101 ITR 748 (Guj), it was held that there was no relationship of a borrower and a lender and, therefore, the interest paid was not allowable under this provision. Similarly, where the assessee, who was a partner in a firm, has taken over all the assets and liabilities of the firm on its dissolution and such assets so taken over included a building fetching rent and the assessee has become liable to pay interest to the outgoing partners on the outstandings due to them, it cannot be said that there was a relationship of a borrower and a lender between the assessee and the outgoing partners so as to avail the deduction under section 24(1)(vi) of the 1961 Act in respect of interest so payable [*CIT v. Four Fields (P.) Ltd.*, (1998) 231 ITR 262, 268, 269-70, 271-72 (Punj)].

Section 24(1)(vi) of the 1961 Act permits deduction of the interest 'payable' on borrowed capital actually utilised for the construction, etc., of property. The deduction has not been made dependent on the actual payment of the amount claimed as deduction. If the amount of interest sought to be deducted had fallen due or a liability in that regard had been incurred in the previous year relevant to the assessment year in question, whether factually the amount of interest is paid or not, it is a permissible deduction under section 24(1)(vi) of the 1961 Act in computing the income chargeable to tax under the head "Income from house property" [*CIT v. Devendra Brothers & Co.*, (1993) 200 ITR 146, 148-49 (All)]. Also see, *CIT v. Pearey Lal & Sons (P.) Ltd.*, (2007) 163 Taxman 213 (Del).

The CBDT had considered the question whether interest on house building advance taken by the Central Government servants under the House Building Advance Rules of the Ministry of Works & Housing can be allowed as deduction when the interest becomes due or when it is actually paid in *Circular No. 363, dated 24-6-1983*. Thus, it was clarified that since the word used is 'payable' under section 24(1)(vi) of the 1961 Act, deduction would be on the basis of accrual of interest which would start running from the date of the drawal of the advance. The interest that accrues is to be calculated annually in terms of rule 6 of the House Building Advance Rules on the balances outstanding on the last day of each month.

In *CIT v. Abdullahhai M. Moonim*, (1981) 132 ITR 642 (Bom), the assessee, a co-owner, claimed deduction in respect of interest paid by him on loan raised by him individually for contributing his share towards the cost of construction of the property. The claim was upheld although the interest on a joint loan collectively taken by all the co-owners had separately been already allowed. Also see, *CIT v. Abdullahhai M. Moonim*, (1984) Taxation 75(1)-27 (Bom); *CIT v. Saifuddin M. Moonim*, (1990) 186 ITR 321 (Bom).

In *Dundoo Madan Mohan Rao v. CIT*, (1978) Tax LR 394 (AP), the assessee was a common partner in two firms. The assessee had purchased a house property belonging to one firm for a sum of ₹ 2,00,000. Over and above this, the assessee had also undertaken to pay a sum of ₹ 1,45,000 to one of the creditors of the said firm. The assessee claimed deduction under section 24(1)(vi) of the 1961 Act in respect of interest paid by him to the said creditor. It was held that there was no nexus or connection between the purchase consideration of ₹ 2,00,000 and the undertaking given by the assessee to pay ₹ 1,45,000. Thus, it could not be said that this amount of ₹ 1,45,000 was borrowed towards purchase of the property. Therefore, section 24(1)(vi) of the 1961 Act has no application to the facts and circumstances of the case. In *Mansa Ram & Sons v. CIT*, (1991) 191 ITR 46, 47 (All), the Tribunal had found that there was no evidence to establish a nexus between the borrowings and the acquisition and construction of the properties in question. Interest on the borrowings was held not, therefore, admissible under section 24(1)(vi) of the 1961 Act. **However**, where the Tribunal had found that there was a nexus between the borrowed capital and the acquisition of property, it was justified in allowing deduction of the interest on such borrowed capital under section 24(1)(vi) of the 1961 Act [*CIT v. Devendra Brothers & Co.*, (1993) 200 ITR 146, 148, 149 (All)].

Interest paid on borrowings taken for payment of unpaid sale price of the house property has been held deductible [*CIT v. R.P. Goenka & J.P. Goenka*, (1998) 99 Taxman 13, 15 (Cal) = (1998) 233 ITR 123, 125-26 (Cal)]. It is evident that if a property is acquired by raising a loan, interest paid on such borrowing is an admissible deduction. If that is so, it is not understood as to what difference it can make if a buyer instead of raising a loan from a third person, enters into an arrangement with a seller to pay the sale price in instalments along with interest due thereon. The moment such an arrangement is entered into, the seller becomes the lender *qua* the unpaid purchase price and the purchaser becomes the borrower. It is because of this reason that the

instalments carry interest from the date of sale to the date of payment. Section 24(1)(vi) of the 1961 Act providing deduction of interest on borrowed capital is an incentive to promote construction of buildings. It cannot be interpreted narrowly so as to defeat the very purpose for which it is enacted. Thus, the unpaid purchase price was to be treated as a borrowed capital within the meaning of section 24(1)(vi) of the 1961 Act [*CIT v. Sunil Kumar Sharma*, (2002) 254 ITR 103, 105 (Punj)]. In that case, a house property was constructed on a commercial site, which was purchased from the Notified Area Committee on instalments. Interest portion of the instalment paid has been held allowable as a deduction under section 24(1)(vi) of the 1961 Act because, in the facts of the case, the unpaid purchase price was to be regarded as borrowed capital. Also see, *CIT v. Master Sukhwant Singh*, (2006) 155 Taxman 153 (Punj).

The deduction in respect of interest on borrowed capital has been held to be permissible in case of a newly constructed residential unit eligible for 'tax holiday' under the second proviso to section 23(1) of the 1961 Act even though such deduction converted the income from such unit into a negative figure [*CIT v. Justice P.C. Jain*, (1989) 179 ITR 572 (Punj)].

The interest paid on borrowings utilised for purchase of house property is allowable as a deduction even though income from such property is tagged with income of other under the provisions of section 64 [*S.M.A. Siddique v. CIT*, (1984) 148 ITR 307 (Mad)].

Where the assessee has received advance for delivery of a flat to the purchaser thereof and interest has been paid to the purchaser for failure to deliver the flat within the stipulated time, such payment by the assessee to the purchaser, even if it were termed as interest, was in the nature of penalty or liquidated damages. No deduction is permissible in respect of such payment under section 24(1)(vi) of the 1961 Act as the same cannot be regarded as interest payable on any borrowed capital with which the construction of the flat was made [*Akash & Ambar Trust v. CIT*, (2004) 268 ITR 93, 95 (Cal)].

The expression "such capital", occurring at the end of clause (vi), refers to capital employed for the acquisition, construction, repair, renewal or reconstruction of the property, the income wherefrom is under computation for tax-levy. It is this capital which is the borrowed capital indicated by the expression "such capital". The expression does not include interest on that capital or interest on interest [*Shewkissen Bhatte v. CIT*, (1969) 74 ITR 331 (Cal), **affirmed in** *Shew Kissen Bhatte v. CIT*, (1973) 89 ITR 61 (SC)]. Thus, compound interest, i.e., interest paid on interest levied by bank, does not qualify for an admissible deduction because of non-payment of instalments of borrowed capital to bank [*Naman Kumar v. CIT*, (2014) 41 taxmann.com 10 (Punj)].

Land revenue or any other State levied tax.—Under the unamended provisions of **section 24(1)(vii) of the 1961 Act**, as it stood up to assessment year 1968-69, it was held that urban land tax levied under the Tamil Nadu Urban Land Tax Act, 1966 (12 of 1966), was not equivalent to "land revenue" so as to qualify for deduction under that clause [*Addl. CIT v. Dinrose Estate*, (1978) 111 ITR 41 (Mad)]. The ambit of this clause, which previously provided for deduction of only land revenue paid, has been extended with effect from the assessment year 1969-70 by including, 'any other tax levied by the State Government' in respect of the property in the allowable deductions. Thus, under the phraseology of the amended section 24(1)(vii) of the 1961 Act, for and from assessment year 1969-70, urban land tax may qualify for deduction as "any other tax levied by the State Government in respect of the property" [see, *CIT v. M.C.T. Muthiah*, (1979) 118 ITR 104 (Mad)].

The allowance is on the basis of actual payment and not on mere liability to pay [*Gulab Singh and Sons Pr. Ltd. v. CIT*, (1974) 94 ITR 537, 545 (Delhi); *Express Newspapers Pr. Ltd. v. CIT*, (1984) 145 ITR 461 (Mad) (holding that urban land tax demanded during the current year but not paid is not deductible under section 24(1)(vii) of the 1961 Act]. As the emphasis is on actual payment and not pay-ability, an assessee is entitled to get deduction of the entire amount paid during the year in respect of land revenue or any other State tax though the amount relates to some other earlier years [*CIT v. M.C.T. Muthiah*, (1979) 118 ITR 104 (Mad); *CIT v. East India Industries (M) Pr. Ltd.*, (1983) 139 ITR 1059 (Mad)]. Thus, the entire urban land tax paid during the previous year has been held allowable, for assessment year 1971-72, as a deduction in computing the income from house property [*CIT v. Amalgamations Ltd.*, (1995) 214 ITR 399, 403 (Mad)].

In *CIT v. Smt. Indramani Devi Singhania*, (1991) 189 ITR 124, 126 (All), it has been held that the tax paid by the owner of a house called *Bhumi and Bhavan Kar*, though a charge upon the tenants, was an allowable deduction for the assessment year 1969-70 under section 24(1)(vii) of the 1961 Act, as the tax was levied on the assessee and was paid by him even though the house was lying vacant.

In *CIT v. Smt. Sumatibai M. Dhanwatey*, (1995) 212 ITR 492, 496 (Bom), repairs cess has been held to be deductible under section 24(1)(vii) of the 1961 Act as it is a tax payable to the State Government. It would be deductible even under section 23 of the 1961 Act. Similarly, in *CIT v. Century Spng. & Mfg. Co. Ltd.*, (1994) 210 ITR 783, 785 (Bom), the repairs and reconstruction cess levied by the Bombay Municipal Corporation has been held allowable as a deduction.

Whether deductions allowable under section 24(1) of 1961 Act may result in loss.—Between 1-4-1962 and 31-3-1987, according to the then **section 24(2) of the 1961 Act**, the total amount deductible under section 24(1) of the 1961 Act in respect of the self-occupied house property consisted of one residential house only which cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, shall not exceed the annual value of the property as determined under the then section 23 of the 1961 Act. Thus, total amount of deductions should not exceed the amount of annual value which would give a negative result.

Between 1-4-1987 and 31-3-2002, according to the then **section 24(3) of the 1961 Act**, the total amount deductible under section 24(1) of the 1961 Act in respect of the property consisted of a house (or part of a house) in the occupation of the owner for the purposes of his own residence, which was let during any part of parts of the previous year, or such property is let out in parts, shall not exceed the annual value of the property as determined under section 23(2)(a)(ii) of the 1961 Act. Thus, total amount of deductions should not exceed the amount of annual value which would give a negative result.

Barring the provisions of sections 24(2) and 24(3), section 24 of the 1961 Act itself does not provide that the result of computation after allowing all the deductions provided thereunder can never be a loss or that the loss is to be ignored. So far as the words of limitation, as contained in the last portion (operative up to 31-3-1984) of the second proviso to section 23(1) of the 1961 Act were concerned, they could not be regarded as forming part of section 24 of the 1961 Act. Those words of limitation had no relevance whatever for determining the extent of deductions provided for under section 24 of the 1961 Act [see, *CIT v. K. Rajagopalan*, (2000) 241 ITR 829, 831 (Mad); *CIT v. S. Balammal*, (2001) 250 ITR 76, 77 (Mad); *CIT v. S. Muthukumaraswamy*, (2002) 120 Taxman 217, 218-19 (Mad)].

Deductions available under section 24(1) of 1961 Act [except interest on borrowed capital] not allowable in certain cases.—In the following mentioned cases, no deduction, except section 24(1)(vi) of the 1961 Act, should be allowed under section 24(1) of the 1961 Act:—

- (1) Where the property consisted of a house (or part of a house) in the occupation of the owner for the purposes of his own residence, which was not let during any part of the previous year and no other benefit therefrom is derived by the owner since the annual value of such house (or part of the house) was taken to be *nil* [the then **section 23(2)(a)(i) of the 1961 Act**].
- (2) Where the self-occupied house property referred to in the then section 23(2) of the 1961 Act consisted of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him since the annual value of such house was taken to be *nil* if such house was not actually let; and no other benefit therefrom was derived by the owner [the then **section 23(3) of the 1961 Act**].

However, the deduction allowable under section 24(1)(vi) of the 1961 Act with regard to interest on borrowed capital was allowable in the above-mentioned cases [(**w. r. e. f. 1-4-1995**) in case of S. No. (2)] also but in the following manner:—

Period	Maximum amount allowable
For assessment years 1987-88 to 1994-95	₹ 5,000
For assessment years 1995-96 and 1996-97	₹ 10,000
For assessment years 1997-98 to 1999-2000	₹ 30,000
For assessment year 2000-01	₹ 75,000 [where property was acquired or constructed with capital borrowed on or after 1-4-1999 and such acquisition or construction was completed up to 31-3-2001]
	₹ 30,000 [in other cases]
For assessment year 2001-02	₹ 1,00,000 [where property was acquired or constructed with capital borrowed on or after 1-4-1999 and such acquisition or construction was completed up to 31-3-2003]
	₹ 30,000 [in other cases]