

LAW OF

**INCOME
TAX**

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Allahabad Law Agency

Law of Income-Tax In India

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**DEDICATED
TO
MY PARENTS**

PREFACE TO THE FIFTH EDITION

I have great pleasure in placing the fifth edition of my book "Law of Income Tax in India" in the hands of readers. Since its last edition published in 1983, the Income Tax Act has undergone a number of amendments.

The Finance Act, 1983 has made several changes in the Income Tax Act. It has amended Ss. 2, 9, 10, 11, 13, 16, 24, 32, 32A, 35, 35B, 35C, 35CC, 35CCA, 37, 44D, 54E, 80A, 80C, 80G, 80GG, 80GGA, 80I, 80JJ, 80L, 80P, 80R, 109, 115A, 164 and 280ZA and has inserted Ss. 43B, 80HHC, 80VVA and 115C, 115D, 115E, 115F, 115G, 115H and 115I. Ss. 80JJA, 80MM and 89A have been omitted by this Finance Act.

The Finance Act, 1984 has amended Ss. 10, 11, 33B, 35, 35C, 36, 40, 40A, 44, 80CC, 80E, 80L, 80M, 80N, 80—O, 80U, 161, 164, 193, 194, 246, 252, 269C, 269F, 269P, 269T, 281A and the Ninth Schedule and has inserted Ss. 44AB, 269SS, 271B and 276DD. S. 80D has been omitted by this Finance Act, w. e. f. 1-4-1985.

The Taxation Laws (Amendment) Act, 1984 has also introduced numerous amendments in the Income Tax Act. It has amended Ss. 2, 9, 10, 13, 16, 17, 23, 40, 40A, 45, 49, 54E, 64, 80, 80C, 80CC, 80L, 130, 132, 132B, 139, 144B, 146, 153, 154, 155, 186, 187, 201, 208, 213, 214, 215, 216, 217, 220, 231, 243, 244, 245A, 245C, 245D, 245E, 245H, 245M, 246, 253, 263, 269K, 271, 273, 273A, 279, 288 and Second Schedule and has inserted Ss. 25A, 47A, 158A. It has substituted a new section for S. 53 w. e. f. 1-4-1985.

All the amendments made by the Finance Act, 1983, the Finance Act, 1984 and the Taxation Laws (Amendment) Act, 1984 have been included in the present edition of the book. When the Taxation Laws (Amendment) Act, 1984 was passed, the book was in press. Consequently, the amendments made by the Taxation Laws (Amendment) Act, 1984 in Ss. 2, 9, 16, 17, 23 and 25A could not be dealt with at appropriate places in the book. However, the Addenda added to this book contains the amendments made by the Taxation Laws (Amendment) Act, 1984 in the aforesaid sections 2, 9, 16, 17, 23 and 25A. The present edition of the book covers all the relevant and important cases reported up to 2nd October, 1984. In citation of the reported decisions, the selective method has been adopted.

On many issues the law is not well-settled. On such issues the conflicting views have been summarized and attempt has been made to derive a conclusion as to the present position of law. Suggestive comments have been made on such issues.

I have received many valuable suggestions from Shri S.K. Verma, Reader in Law, Banaras Hindu University and Shri K. N. Chaturvedi, Reader in Law, University of Pune. I am greatly indebted to them. I extend my thanks to the publishers, M/s Allahabad Law Agency, for their cooperation in bringing out this edition of the book.

Any suggestion for the improvement of the book will be highly appreciated.

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Kailash Rai

PREFACE TO THE FIRST EDITION

The law of income-tax is a most complicated subject. Its complication has been increased by frequent amendments. The present Income Tax Act, 1961 which repealed the Income Tax Act, 1922 was meant to make the income-tax law stable and simple but on account of the frequent amendments it has also become much complicated. In June, 1977 a Committee was appointed by the present Government to examine and suggest legal and administrative measures for simplification and rationalisation of the direct tax laws and we hope that the Committee would be able to suggest satisfactory measures to make the direct tax laws including the law of income tax, simple and stable.

In writing this book my main object has been to explain the provisions of the Income Tax Act in a very simple and lucid language with the help of suitable illustrations. A selective method has been adopted in citation of the reported decisions. The principles laid down in different cases have been stated in simple language so that the readers may be able to grasp them. Unnecessary discussions have been avoided with the object to make the subject easy and interesting. Where the law is not well-settled, an attempt has been made to derive a conclusion as to the present position of law. Every attempt has been made to include all the important cases upto the 5th August, 1977. Besides the book contains all the amendments made upto August, 1977. *A special feature of this book is that it incorporates the provisions of the Finance Act, 1977.* In order to have the complete knowledge of the law of income-tax, the knowledge of the Income Tax Rules and Departmental Circulars is also necessary. On account of it the important Rules and Circulars have also been referred to.

The book has been divided into 26 Chapters. Chapter I deals with the meaning of certain concepts. Chapter II deals with the capital and revenue receipts, expenditures and losses. Chapter III deals with the charge of income-tax including the determination and importance of the residential status of the assessee for the purpose of income-tax. Chapter IV deals with the incomes which do not form the part of total income, i. e. the incomes which are not included in the total income of the assessee even for the purpose of determination of rate of tax for him. Chapters V to XII deal with the computation of total income under different heads of income. Chapters XIII to XVI deal with the determination of total income. Chapters XVII to XIX deal with the procedure for assessment, liability in special cases and special provisions applicable to firms. Chapter XX deals with certain reliefs and special provisions. Chapters XXI and XXII deals with the collection, recovery and refund procedures and also acquisition of immovable properties in certain cases of transfer to contract evasion of tax. Chapter XXIII deals with the Income-Tax Authorities. Chapter XXIV deals with the penalties and prosecutions and Chapter XXV deals with the provisions relating to settlement of cases, appeal, reference and revision. The last Chapter XXVI contains the miscellaneous provisions.

It is my pleasant duty to extend my thanks to the publishers, M/s. Allahabad Law Agency for their cooperation in the publication of this book. I also extend my thanks to Sri B. N. Singh and Sri Aijaz Ahmad (Librarians, Law Library, A. U.) for their cooperation in finding out the relevant materials.

Any suggestion for the improvement of the book will be highly appreciated. I shall deem my efforts amply rewarded, if the book helps the readers in understanding the complicated provisions of the Income Tax Act.

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ADDENDA

The amendments made by the Taxation Laws (Amendment) Act, 1984 in Ss. 2, 9, 16, 17, 23 and 25A). 1. S. 2 : In S. 2, for the existing clause (47), a new clause (47) has been substituted w. e. f. 1-4-1985. The new clause (47) has enlarged the definition of transfer in relation to a capital asset. Under the existing clause (47) "transfer" in relation to a capital asset includes,—(i) the sale, exchange or relinquishment of the asset, or (ii) the extinguishment of any rights therein ; or (iii) the compulsory acquisition thereof under any law. Under the new clause (47) transfer in relation to a capital asset, includes to aforesaid as well as, in a case where the asset is converted by the owner thereof in to, or is treated by him as stock in trade of a business carried on by him, such conversion or treatment. Thus, as the new clause (47) provides w. e. f. 1-4-1985 "transfer" in relation to a capital asset, includes—(i) the sales, exchange or relinquishment of the asset ; or (ii) the extinguishment of any rights therein ; or (iii) the compulsory acquisition thereof under any law ; or (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment.

S. 2 (47) has been stated on p. 184, of the book : Read the aforesaid amendment on p. 184 of the book)

2. S. 9 : In S. 9, in the explanation to clause (i), a new clause (d) has been inserted w. e. f. 1-4-1982. Under the existing provisions of S. 9 (1) (i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through the transfer of a capital asset situate in India, is deemed to accrue or arise in India. The new clause (d) inserted to the Explanation to clause (i) of S. 9 provides that in the case of a non-resident being an individual who is not a citizen of India or a firm which does not have any partner who is a citizen of India or who is a resident in India or a company who does not have any shareholder who is a citizen of India or who is resident in India, no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematograph film in India.

(Read the aforesaid amendment on p. 41 of the book)

3. S. 16 : In S. 16, in clause (i), after the proviso, the following explanation has been inserted w. e. f. 1-4-1975. This explanation makes it clear that where, in the case of an assessee, salary is due from or paid or allowed by more than one employer, the deduction under this clause shall be computed with reference to the aggregate salary due, paid or allowed to the assessee and shall in no case exceed the amount specified under this clause.

(Read it on P. 57 of the book)

4. S. 17 : I. In clause (1), a new clause (va) has been inserted w. e. f. 1-4-1978. According to this new clause any payment received by an employee in respect of any period of leave not availed of by him shall be included within the meaning of 'salary' chargeable to income-tax. It is to be noted that under S. 10 (10AA) any payment received by an employee of the Central

Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement is exempt from income-tax. Consequently, after the aforesaid amendment, payment received by an employee in respect of any period of leave not availed of by him will be taxable unless such payments are made on retirement and qualify for the exemption under sub-section (10 AA) of S. 10.

(Read the above amendment on p. 53 of the book).

II. In clause (2) a new sub-clause (vi) has been inserted w. e. f. 1-4-1985. This new sub-clause provides that where the employer has advanced any loan to the employee for the purpose of building a house or purchasing a site or a house and a site or for purchasing a motor car and either no interest is charged by the employer on the amount of such loan or interest is charged at a rate lower than the rate of interest which the Central Government may, having regard to the rate of interest charged by it from its employees on loans for such purpose granted to them, specify in this behalf by notification in the Official Gazette, an amount equal to—

(a) in a case where such loan is advanced without charging any interest, the interest calculated in the prescribed manner on such loan at the rate so specified ;

(b) in a case where such loan is advanced by charging interest at a rate lower than the rate so specified, the difference between the interest calculated in the prescribed manner on such loan at the rate so specified and the interest charged by the the employer. However the provisions of this sub clause shall not apply in the case of an employee of the Central Government or any State Government ; or an employee, not being an employee referred to in paragraph (a) or paragraph (b) of sub-clause (iii), whose income under the head "Salaries ; exclusive of the value all benefits or amenities not provided for by way of monetary payment, does not exceed Rs. 18,000.

(Read the aforesaid new sub-clause (vi) on p. 55 of the book.

5. S. 23 I. In sub section (1), for the first proviso, a new proviso has been substituted w. e. f. 1-4-1985. Under the existing proviso where the property is in occupation of a tenant, the taxes levied by the local authority in respect of the property are, allowed as deduction in determining the annual value of the property to the extent such taxes are borne by the owner. Under the new proviso where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

(Read it on P. 67 of the book)

II. In second proviso to sub-section (1) of S. 23 "so however that the income in respect of any residential unit referred to in clause (a) or clause (b) or clause (c) or clause (d) is in no case a loss" has been omitted w. e. f. 1-4-1984. Under this proviso a deduction is allowed in respect of the annual value of residential units forming part of newly constructed buildings let out on rent subject to the restriction that the income in respect of such

residential units shall in no case be a loss. This restriction has been deleted by the Taxation Laws (Amendment) Act, 1984 w. e. f. 1-4-1984

(Read it on p. 68 of the book)

III. A new explanation has been inserted to sub-section (1) of S. 23 w. e. f. 1-4-1985. The new explanation makes it clear that where a deduction in respect of any taxes referred to in the first proviso to this sub-section is allowed in determining the annual value of the property in respect of any previous year (being a previous year relevant to the assessment year commencing on 1-4-1984 or any earlier assessment year), no deduction shall be allowed under the first proviso in determining the annual value of the property in respect of the previous year in which such taxes are actually paid by the owner.

(Read it on p. 67 of the book).

6. S. 25 A : A new S. 25 A has been inserted w. e. f. 1-4-1985. It contains special provision for cases where unrealised rent allowed as deduction is realised subsequently. It provides that where a deduction has been made under clause (x) of sub-section (1) of S. 24 in the assessment for any year in respect of rent from property let to a tenant which the assessee cannot realise and subsequently during the previous year the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head "Income from house property" and accordingly charged to income-tax without making any deduction under S. 23 or S. 24 as the income of that previous year, whether the assessee is the owner of that property in that year or not.

(Read this section on p. 72 of the book)

The Finance Act, 1985

The amendments made by the Finance Act, 1985 in the Income Tax Act are as follows :

S. 2 (18) : Clause (18) of S. 2 defines 'the company in which the public are substantially interested'. This clause has been amended by the Finance Act, 1985 w. e. f. 1-4-1984. A new sub-clause (ac) has been inserted in clause (18) of S. 2. w. e. f. 1-4-1984. This new sub-clause (ac) provides that a company will be treated as a company in which the public are substantially interested if it is a mutual benefit finance company, that is to say, a company which carried on, as its principal business, the business of acceptance of deposits from its member and which is declared by the Central Government under S. 620A of the Companies Act, 1956 to be a Nidhi or Mutual Benefit Society.

S. 10 : Clause (10B) of S. 10 has been amended w. e. f. 1-4-1986. W.e.f. 1-4-1986 S. 10 exempts from income tax any compensation received by a workman under the Industrial Disputes Act, 1947 or under any other Act or rules, orders a notification issued thereunder or under any standing orders or under any award, contract of service or otherwise, at the time of his retirement, *provided* that the amount exempt under this clause shall not exceed an amount calculated in accordance with the provisions of clause (b) of S. 25F of the Industrial Disputes Act, 1947, or Rs. 50,000, whichever is less :

Provided further that the *preceding proviso* shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.

Besides, a new sub-clause (iiia) has been inserted in clause 15 of S. 10 w. e. f. 1-4-1986. It exempts from income tax interest payable to any bank incorporated in a country outside India and authorised to perform Central banking functions in that country on any deposit made by it with the approval of the Reserve Bank of India with any scheduled bank.

W. e. f. 1-4-1986 the exemption available under *clause (26A) of S. 10* has been extended for a further period of 3 years and, thus, this exemption will be available upto the assessment year 1988-89.

S. 16 : Under this section the salaried tax payers are allowed as standard deduction an amount equal to 25 per cent of the salary or Rs. 6,000, whichever is less. However, in the following cases the standard deduction is restricted to Rs. 1,000 only—(a) Where the employee is provided with a motor car, motor-cycle, scooter or other moped by his employer for use by the employee otherwise than wholly and exclusively in the performance of his duties or (b) where one or more motor-cars are owned or hired by the employer of the employee and the employee is allowed the use of such motor car or all or any of such motor car otherwise than wholly and exclusively in the performance of his duties. The Finance Act, 1985 has added a new explanation w.e.f. 1-4-1986. This explanation makes it clear that the use of any vehicle provided by the employer for journey by the employee from his residence to his office or other

place of work or from such office or place to his residence shall not be regarded as the use of such vehicle otherwise than wholly and exclusively in performance of his duties.

S. 17 : Item (c) of sub-clause (iii) of clause (2) of S. 17 has been amended by the Finance Act, 1985 w. e. f. 1-4-1986. W. e. f. 1-4-1986 'perquisite' will include the value of any benefit or amenity granted or provided free of cost or at concessional rate by employer to an employee (not being a director of the Company or a person having substantial interest in the company) and whose income under the head "salaries" (whether due from or paid or allowed by one or more employers) exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds Rs. 24,000.

Besides sub-clause (vi) inserted by the Taxation Laws (Amendment) Act, 1984 in clause (2) of S. 17 w. e. f. 1-4-1985 has been omitted by the Finance Act, 1985 w. e. f. 1-4-1985.

S. 33AB : This is a new section inserted by the Finance Act, 1985 w.e.f. 1-4-1986. The section provides for tea development account. Where an assessee carrying on the business of growing and manufacturing tea in India has, during the previous year, deposited with the National Bank any amount in an account, (hereinafter referred to as the special account) maintained by the assessee with the Bank in accordance with a scheme approved in this behalf by the Tea Board, the assessee shall be allowed a deduction of a sum equal to the amount of the aggregate of the amounts so deposited during the previous year or a sum equal to 20 per cent of the profits of such business computed under the head "Profits and gains of business or profession" before making any deduction under this section), whichever is less. In this section "National Bank" means the National Bank for Agriculture and Rural Development established under S. 3 of the National Bank for Agriculture and Rural Development Act, 1981 and "Tea Board" means the Tea Board established under S. 4 of the Tea Act, 1953. Where any amount standing to the credit of the assessee in the special account is utilised by the assessee for the purposes of the business referred to in this section in accordance with the scheme—(a) for acquiring any asset being building machinery, plant or furniture, the actual cost of such asset as determined under clause (1) of S. 43 shall, for the purpose of this Act, be reduced by the amount so utilised ;

(b) for incurring any expenditure for the purposes of such business, such expenditure shall be reduced by the amount so utilised of this Act. Where any amount standing to the credit of the assessee in the special account which is released during any previous year by the National Bank for being utilised by the assessee for the purpose of the business referred to in this section in accordance with the scheme is not so utilised and resultant sum shall be taken into account for the purposes of this Act.

Where any amount standing to the credit of the assessee in the special account which is released during any previous year by the National Bank for being utilised by the assessee for the purposes of the business referred to in this section in accordance with the scheme is not so utilised within that previous year, the amount not so utilised shall be deemed to be profit and gains of business and chargeable to income tax as the income of that previous year. The provisions of this section shall apply in relation to the assessment year commencing on 1-4-1986 and the 4 assessment year next following that assessment year.

S. 35AB : This is a new section inserted by the Finance Act, 1985 w.e.f. 1-4-1986. It provides that where the assessee has paid in any previous year any lump-sum consideration for acquiring any know-how for the use for the purposes of his business, one-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal instalment for each of the five immediately succeeding previous years. Where the know-how is developed in a laboratory, university or institution referred to in sub-section (2B) of Section 32A, one-third of the said lump sum consideration paid in the previous year by the assessee shall be deducted in computing the profits and gains of the business for that year and the balance amount shall be deducted in equal instalments for each of the two immediately succeeding previous year.

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

S. 35. CC : W. e. f. 17.3. 1985 a new proviso has been inserted. According to this proviso no programme shall be approved under S. 35 CC after 16-3-1985.

S. 36 : This section provides for deduction in computation of profits and gains of business or profession Clause VII of sub-section (1) of S. 36 provides for the deduction of the amount of any debt which is established to have become a bad debt in the previous year. A new proviso inserted by the Finance Act, 1985 w. e. f. 1-4-1985 provides that in the case of bank to which clause (vii-a) (stated below), applies, the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account under that clause.

w. e. f. 1-4-1985 clause (vii-a) of sub-section (1) of S. 36 has been amended. In computation of profits and gains of business or profession the deduction shall be allowed in respect of any provision for bad and doubtful debt made by a scheduled bank (not being a bank approved by the Central Government for the purposes of clause (vii-a) or a bank incorporated by or under the laws of a country outside India) or a non scheduled bank, an amount not exceeding 10% of the total income (computed before making any deduction under this clause and chapter VIA) or an amount not exceeding 2 % of the aggregate average advances made by the rural branches of such bank, computed in the prescribed manner, whichever is higher.

In explanation to sub-section (1) of S. 36, in clause (ii), "for the words and figures" etc., at the end of clause (b) of sub-section (2), "the words and figures etc." to clause (iii) of sub-section (5)" shall be substituted and in clauses (viii) and (viii-a) for the words and figures "computed before making any deduction under ehadter VIA, the words and figures" computed before making any deduction under this clause and Chapter VIA" shall be substituted.

In sub-section (2) of S. 36 a new clause (V) has been inserted. It provides that where such debt or part of debt relates to advances made by a bank to which clause (vii-a) of sub-section (1) applies, no such deduction shall be allo-

wed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debt account made under that clause.

The above amendment will take effect from 1-4-1985.

S. 37 : w. e. f. 1-4-1986, in sub-section (1) of S. 37 "and section 80VV" shall be omitted and sub-sections (3A), (3B), (3C) and (3D) of S. 37 shall be omitted.

S. 40-A : In section 40A in sub-section (5) in clause (b) of Explanation 2, sub-clause (vi) shall be omitted w. e. f. 1-4-1985. Besides, sub-section (8) of S. 40A shall be omitted w. e. f. 1-4-1986. A new sub-section (12) shall be inserted in S. 40A w. e. f. 1-4-1986. This sub-section (12) provides that no deduction shall be allowed in excess of Rs. 10,000 for any assessment year in respect of any expenditure incurred by the assessee by way of fee or other remuneration paid to any person other than an employee of the assessee.

(a) for services (not being services by way of preparation under this Act before any income tax authority or the Commission constituted under S. 245D or a competent authority within the meaning of clause (b) of S. 269-A of the Appellate Tribunal or any court,

(b) for services in connection with any other proceedings before any court being a proceeding relating to tax, penalty, interest or any other matter under this Act, and

(c) for any advice in connection with tax, penalty, interest or any other matter under this Act.

S. 44 AB: In S. 44 AB, in the proviso, the words "by an accountant" shall be omitted w. e. f. 1-4-1985.

S. 54 : In sub-section (1) of S. 54 "to which the provisions of S. 53 are not applicable" shall be omitted w. e. f. 1-4-1985.

S. 58 : In clause (a) of sub-section (1) after clause (i), a new clause (ia) has been inserted w. e. f. 1-4-1986. It provides that any expenditure of the nature referred to in sub-section (12) of S. 40 A shall not be deductible in computing the income chargeable under the head "income from other sources."

S. 80 CC: In sub-section (3) of S. 80 CC in clause (a) for the words "with the main object of carrying on the business of", the words "and the issue is wholly and exclusively for the purpose of carrying on the business of" shall be substituted and in proviso, the words "formed and registered in India with the main object of" shall be omitted w. e. f. 1-4-1985.

S. 80. G : In sub-section (1) of S. 80 G for clause (i) the following has been substituted w. e. f. 1-4-1986. It provides that in computing the total income of the assessee, there shall be deducted in a case where the aggregate of the sum specified in sub-section (2) includes any sum or sums of the nature specified in subclause (iia) or in sub-clause (vii) of clause (a) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus 50% of the balance of such aggregate.

Sub-section (2) of S. 80 G enumerates the sums in respect of which deduction as allowed under sub-section (1) of S. 80 G. Such sums shall include, w. e. f. 1-4-1985, also sums paid by the assessee in the previous year as donation to the Indira Gandhi Memorial Fund, the deed of declaration in respect whereof was registered at New Delhi on 21-2-1985.

S. 80 HHC : w. e. f. 1-4-1986 for the existing S. 80 HHC a new section 80 HHC has been substituted. The new S. 80 HHC provides that where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction of an amount, not exceeding fifty per cent of the profits derived by the assessee from the export of such goods or merchandise :

Provided that an amount equal to the amount of the deduction claimed under this sub-section is debited to the profit and the loss account of the previous year in respect of which the deduction is to be credited to a reserve account to be utilised for the purposes of the business of the assessee.

This section applies to all goods or merchandise, other than those specified in clauses (b), if the sale proceeds of such goods or merchandise, exported out of India are receivable by the assessee in convertible foreign exchange.

This section does not apply to the following goods or merchandise :—

- (i) mineral oil ; and
- (ii) mineral and ores.

For the purpose of this section profits derived from the export of goods or merchandise out of India shall be :—

- (a) in the case where the business carried on by the assessee consists exclusively of the export out of India of the goods or merchandise to which this section applies, the profits of the business as computed under the head “Profits and gains of business or profession”.
- (b) in a case where the business carried on by the assessee does not consist exclusively of the export out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head “Profit and gains of business or profession”) the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

For the purpose of this section :—

- (a) “convertible foreign exchange” means foreign exchange which if for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purpose of the Foreign Exchange Regulation Act, 1973, and any rules made thereunder;
- (b) “export turnover” means the sale proceeds receivable by the assessee in convertible foreign exchange of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962.

S. 80 I : In clause (iii) of sub-section (2) and also of sub-section (3) for the words “four years”, the words nine years shall be substituted and in clause (iv) of sub-section (4), for “before 1-4-1985,” “before 1-4-1990” shall be substituted w. e. f. 1-4-1985.

S. 80JJ : S. 80JJ shall be omitted w. e. f. 1-4-1986.

S. 80N : S. 80N shall be omitted w. e. f. 1-4-1986.

S. 80QQA : This section has been amended w. e. f. 1-4-1985. The deduction under S. 80QQA has been extended for a further period of 5 years and thus this deduction will be available upto the assessment year 1889-90.

S. 80 V : S. 80V shall be omitted w. e. f. 1-4-1986.

S. 80VV : This section shall be omitted w. e. f. 1-4-1986.

S. 115 : In clause (i), for sub-clause (a), the following shall be substituted w. e. f. 1-4-1986 “(a) on so much of the amount of such long term capital gains as relate to buildings lands or any right in building on lands, at the rate of fifty per cent.”

S. 115E : w. e. f. 1986 in sub-section (1) “as increased by a sub-charge for purposes of union at the rate of twelve and a half per cent of such income tax.” shall be omitted and in sub-section (2), in clause (i), for “the aggregate of the income tax and surcharge”, the income tax shall be substituted.

S. 136 : In S. 36, “and every income tax authority shall be deemed to be a Civil Court for the purposes of S. 195 but not for the purpose of chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)” shall be inserted and shall be deemed to have been inserted at the end w. e. f. 1-4-1974.

S. 139 : In sub-section (1A), in clause (b) for “18,000 rupees”, “24,000 rupees” shall be substituted w. e. f. 1-4-1986. In sub-section (9), in the explanation in clause (e), for “auditor’s report”, auditor’s report and where an audit of cost accounts of the assessee has been conducted under section 233B of the Companies Act, 1956 (1 of 1956 also the report under that section” shall be substituted w. e. f. 1-4-19856

S. 167A : For S. 167A, the following section 167A shall be substituted w. e. f. 1-4-1985. It provides that where the individual shares of the members of an association of persons (other than a company or co-operative society) in the whole or any part of the income of such association are indeterminate or unknown tax shall be charged on the total income of the association at the maximum marginal rate. For the purpose of this section,—(a) “maximum marginal rate” shall have the meaning assigned to it in explanation (2) below sub-section (3) of section 164 ;

(b) the individual shares of the members of an association of persons in the whole or any part of the income of such association shall be deemed to be determinate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or at any time thereafter.

S. 180A : A new section 180A shall be inserted w. e. f. 1-4-1986. It provides that where the time taken by an individual who is a resident in India, for developing any know-how is more than 12 months, he may elect that the gross amount of any lump sum consideration received or receivable by him during the previous year for allowing use of such know-how shall be treated for the purpose of charging income tax for that year and for each of the immediately preceding previous year as if one third, thereof were included in his income chargeable to tax for each of those years respectively and if he so elects, notwithstanding anything contained in other provision of this Act.—(a)

such gross amount shall be so treated and (b) the assessments for each of the two preceding previous years shall, if made, be accordingly rectified under section 154, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the amount was received or receivable by such individual is made. For the purpose of this section, the expression "know-how" has the meaning assigned to it in section 35AB.

S. 208 : In sub-section (2), in clauses (c) and (d), for "Rs. 15,000" "Rs. 18,000" shall be substituted, this will apply in relation to the Financial year 1985-86 and subsequent years.

S. 245D : In sub-section (2A) after "order under sub-section (1)", "allowing the application to be proceeded with" has been inserted w. e. f. 1-10-1985.

S. 273A : Explanation 2 below sub-section (1) shall be omitted w. e. f. the date of assent of the Finance Act, 1985.

S. 278A : In this section, after section 276CC, "or section 276DD" shall be inserted w. e. f. the date of the assent of Finance Act, 1985.

Consequential amendment made w. e. f. 1-4-1986 : (a) In section 80A, in sub-section (i), for "80VV", "80U", shall be substituted and in sub-section (3), "or section 80JJ" shall be omitted. In S. 800 for the explanation following explanation shall be substituted "For the purpose of this section—(i) convertible 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 law for the time being in force for regulating payments and dealings in foreign exchange ; (ii) any income used by the assessee outside India in the manner permitted by the Reserve Bank of India shall be deemed to have been brought into India in accordance with the law for the time being in force for regulating payments and in dealings in foreign exchange on the date on which such permission is given.

In section 80P, in sub-section (3) "or section 80JJ" shall be omitted and for "section 80J and section 80JJ" "and section 80J" shall be substituted. In section 80VVA, in sub-section (2), clause (xxiii), and clause (xxvi) shall be omitted and a new clause (xiiiia) shall be inserted. This new clause provides that the provisions referred to in sub-section (1) of S. 80VVA shall also include S. 33AB. In 155, sub-section (11) shall be omitted. In 269 SS in the explanation, for clause (i) the following clause shall be substituted. "(i) "banking company" means a company to which the Banking Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of the Act. In S. 269T in the explanation for clause (i) the following shall be substituted—

"(i) "banking company" shall have the meaning assigned to it in clause (i) of the explanation to S. 269 SS. "The Tenth Schedule has been omitted w. e. f. 1-4-1986.

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