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**[THE] FINANCE (NO. 2) ACT, 1998**  
**(ACT NO. 21 OF 1998)**

**[1st August, 1998]**

**An Act to give effect to the financial proposals of the Central Government for the financial year 1998-99.**

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows :—

## CHAPTER I

### PRELIMINARY

**1. Short title and commencement.**— (1) This Act may be called the Finance (No. 2) Act, 1998.

(2) Save as otherwise provided in this Act, sections 2 to 98 (except section 51) shall be deemed to have come into force on the 1st day of April, 1998.

## CHAPTER II

### RATES OF INCOME-TAX

**2. Income-tax.**— (1) Subject to the provisions of sub-sections (2) and (3) for the assessment year commencing on the 1st day of April, 1998, income-tax shall be charged at the rates specified in Part I of the First Schedule.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding six hundred rupees, in addition to total income, and the total income exceeds forty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) (that is to say, as if the net agricultural income were comprised in the total income after the first forty thousand rupees of the total income but without being liable to tax), only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of forty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be.

(4) In cases in which tax has to be charged and paid under section 115-O of the Income-tax Act, the tax shall be charged and paid at the rate specified in that section.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act at the rates in force, the deduction shall be made at the rates specified in Part II of the First Schedule.

(6) In cases in which tax has to be deducted under sections 194C, 194G, 194-I, 194J and 194K of the Income-tax Act, the deduction shall be made at the rates specified in those sections.

(7) In cases in which tax has to be collected under section 206C or under the proviso to section 194B of the Income-tax Act, the collection shall be made at the rates specified in that section or at the rate specified in Part II of the First Schedule, as the case may be.

(8) Subject to the provisions of sub-section (9) in cases in which income-tax has to be calculated under the first proviso to sub-section (5) of section 132 of the Income-tax Act or charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the said Act or deducted under section 192 of the said Act from income chargeable under the head Salaries or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed, at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so calculated, charged, deducted or computed at the rate or rates specified in Part III of the First Schedule.

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this subsection or the rates as specified in that Chapter or section, as the case may be.

(9) In the cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year in such other period, any net agricultural income exceeding six hundred rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in calculating Income-tax under the first proviso to sub-section (5) of section 132 of the Income-tax Act or in charging Income-tax under sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force.

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) (that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax), only for the purpose of calculating, charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(b) such income-tax or, as the case may be, "advance tax" shall be so calculated, charged or computed as follows :—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or as the case may be

"advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be "advance tax" in respect of the total income.

(10) For the purposes of this section and the First Schedule.—

(a) "domestic company" means an Indian company, or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 1998 has made the prescribed ar-

rangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income.

- (b) "Insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance).
- (c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived of that person computed in accordance with the rules contained in Part IV of the First Schedule.
- (d) all other words and expressions used in this section or in the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meaning respectively assigned to them in that Act.

### CHAPTER III

#### DIRECT TAXES

##### Income-tax

**3. Substitution of new authorities.**— In the Income-tax Act, save as otherwise expressly provided, and unless the context otherwise requires, the reference to any authority specified in column (1) of the Table below shall be substituted with effect from the 1st day of October, 1998 by reference to the authority or authorities specified in the corresponding entry in column (2) of the said Table and such consequential changes as the rules of grammar may require shall also be made :

TABLE

(1)	(2)
1. Assistant Commissioner	Assistant Commissioner or Deputy Commissioner
2. Assistant Director	Assistant Director or Deputy Director
3. Deputy Commissioner	Joint Commissioner
4. Deputy Director	Joint Director

**4 to 25.— Amendment of Act 43 of 1961.**— [Note :— These sections amend various sections of Income-tax Act, 1961, which amendments have been incorporated in the principal Act.]

**26. Insertion of new section 71B.**— After section 71A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1999, namely :—

**"71B. Carry forward and set-off of loss from house property.**— Where for any assessment year the net result of computation under the head "Income from house property" is a loss to the assessee and such loss cannot be or is not wholly set-off against income from any other head of income in accordance with the provisions of section 71 so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and—

- (i) be set-off against the income from house property assessable for that assessment year; and
- (ii) the loss, if any, which has not been set-off wholly, the amount of loss not so set-off, shall be carried forward to the following assessment year, not being more than eight assessment years immediately succeeding the assessment year for which the loss was first computed;"

**27. Amendment of section 72A.**— This section amends section 72A of the Income-tax Act, 1961, which have been incorporated in the principal Act.

**28. Substitution of new section for sections 80-DD and 80-DDA.**— For sections 80DD and 80DDA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 1999, namely :—

**‘80-DD. Deduction in respect of maintenance including medical treatment of handicapped dependant.**— (1) In computing the total Income or an assessee who is a resident of India, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the amount—

- (a) of expenditure incurred by way of medical treatment (including nursing), training and rehabilitation of a handicapped dependant; or
- (b) paid or deposited under any scheme framed in this behalf by the Life Insurance Corporation or Unit Trust of India subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of handicapped dependant,

out of his income chargeable to tax;

Provided that no such amount shall exceed forty thousand rupees in the aggregate under clause (a) or clause (b) or both.

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

- (a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a handicapped dependant in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;
- (b) the assessee nominates either the handicapped dependant or any other person or a trust to receive the payment on his behalf, for the benefit of the handicapped dependant.

(3) If the handicapped dependant predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2) an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

(4) In this section,—

- (a) “Government hospital” includes a departmental dispensary whether full-time or part-time established and run by a Department of the Government for the medical attendance and treatment of a class or classes of Government servants and members of their families, a hospital maintained by a local authority and any other hospital maintained by a local authority and any other hospital with which arrangements have been made by the Government for the treatment of Government servants;

(b) “handicapped dependant” means a person who—

- (i) is a relative of the individual or, as the case may be, is a member of the Hindu undivided family and is not dependant on any person other than such individual or Hindu undivided family for his support or maintenance; and
- (ii) is suffering from a permanent physical disability (including blindness) or is subject to mental retardation, being a permanent physical disability or mental retardation.



dation specified in the rules made by the Board for the purposes of this section, which is certified by a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in a Government hospital, and which has the effect of reducing considerably such person's capacity for normal work or engaging in a gainful employment or occupation;

- (c) "Life Insurance Corporation" shall have the same meaning as in clause (iii) of sub-section (8) of section 88;
- (d) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963.

**29 and 30. Amendment of sections 80G and 80GG.**— These sections amend sections 80G and 80GG of the Income-tax Act, 1961, which amendments have been incorporated in the principal Act.]

**31. Insertion of new section 80-HHBA.**— After section 80-HHB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1999, namely :—

**"80-HHBA. Deduction in respect of profits and gains from housing projects in certain cases.**— (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is a resident in India includes any profits and gains derived from the execution of a housing project awarded to the assessee on the basis of global tender and such project is aided by the World Bank, 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 from such profits and gains of an amount equal to fifty per cent thereof.

(2) The deductions under this section shall be allowed only if the following conditions are fulfilled, namely :—

- (i) the assessee maintains, separate accounts in respect of the profits and gains derived from the business of the execution of the housing project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes along with his return of income the report of such audit in the prescribed form duly signed and verified by such accountant;
- (ii) an amount equal to fifty per cent of the profits and gains referred to in sub-section (1) is debited to the profits and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the Housing Projects Reserve Account) to be utilized by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profit.

Provided that where the amount credited by the assessee to the Housing Projects Reserve Account in pursuance of clause (ii) is less than fifty per cent of the profits and gains referred to in sub-section (1) the deduction under this section shall be limited to the amount so credited in pursuance of clause (ii).

(3) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilises the amount credited to the Housing Projects Reserve Account for distribution by way of dividends or profit or for any other purpose which is not a purpose of the business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed and the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make necessary amendment and the

provision of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the money was so utilised.

(4) Notwithstanding anything contained in any other provision of this Chapter under heading "C".— Deduction in respect of certain incomes," no part of the Income payable to the assessee for the execution of a housing project under sub-section (1) shall qualify for deduction for any assessment year under any other provision.

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

(a) "housing project" means a project for—

(i) the construction of any building, road, bridge or other structure in any part of India;

(ii) the execution of such other work (of whatever nature) as may be prescribed;

(b) "World Bank" means the International Bank for Reconstruction and Development Bank referred to in the International Monetary Fund and Bank Act, 1945;

**32 to 34.** These sections amend sections 80HHD, 80HHE and 80IA of the Income-tax Act, 1961, which amendments have been incorporated in the principal Act].

**35. Insertion of new section 80JJA.**— After section 80JJ of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1999, namely:—

**"80JJA. Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste.**— Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power, producing bio-gas, making pellets or briquettes for fuel or organic manure, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the whole of such income, or five lakh rupees, whichever is less."

**36. Insertion of new section 80JJAA.**— After section 80JJA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1999, namely:—

**"80JJAA. Deduction in respect of employment of new workman.**— (1) Where the gross total income of assessee, being an Indian company, includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, there shall, subject to the condition specified in sub-section (2) be allowed a deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in the previous year for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under "sub-section (1) shall be allowed—

(a) if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking;

(b) unless the assessee furnishes along with the return of income the report of the accountant, as defined in the Explanation below sub-section (2) of section 288 giving such particulars in the report as may be prescribed.

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

(i) "additional wages" means the wages paid to the new regular workman in excess of one hundred workmen employed during the previous year :

Provided that in the case of an existing undertaking, the additional wages shall be nil if the increase in the number of regular workmen employed during the year is less than ten per cent. of existing number of workmen employed in such undertaking as on the last day of the preceding year;

(ii) "regular workman", does not include—

- (a) a casual workman; or
- (b) a workman employed through contract labour; or
- (c) any other workman employed for a period of less than three hundred days during the previous year;

(iii) "workman" shall have the meaning assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947.

**37 to 48. Amendment of Act 43 of 1961.**— [Note :— These sections amend various sections of the Income-tax Act, 1961, which amendments have been incorporated in the principal Act].

**49. Insertion of new section 246A.**— After section 246 of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 1998, namely:—

**"246A. Appealable orders before Commissioner (Appeals).**— (1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

- (a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144 to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;
- (c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order made under sub-section (2) or sub-section (3) of section 170;
- (f) an order made under section 171;
- (g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;
- (i) an order made under section 237;
- (j) an order imposing a penalty under—
  - (A) section 221; or
  - (B) section 271, section 271A, section 271F, section 272AA or section 272BB.
  - (C) section 272, section 272B or section 273 as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year.
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of



January, 1997;

- (1) an order imposing a penalty under sub-section (2) of section 158BBFA;
- (m) an order imposing a penalty under section 271B or section 271BB.
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;
- (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
- (p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;
- (q) an order imposing a penalty under Chapter XXI;
- (r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

**Explanation.**— For the purposes of this sub-section, where on or after the 1st day of October, 1998 the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for “Deputy Commissioner” and “Deputy Director” shall be substituted by “Joint Commissioner” and “Joint Director” respectively.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day;

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

**Explanation.**— For the purposes of this section, “appointed day” means ‘the day appointed by the Central Government by notification in the Official Gazette.’

**50 to 57.** These sections amend various sections of Income-tax Act, 1961, which amendments have been incorporated in the principal Act.

**58. Insertion of new sub-heading and sections in Chapter XX.**— In Chapter XX of the Income-tax Act, after sub-heading ‘C’, the following sub-heading and sections shall be inserted with effect from the 1st day of October, 1998, namely :—

#### “CC. Appeals to High Court

**260A. Appeal to High Court.**— (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal under this section shall be—

- (a) filed within one hundred and twenty days from the date on which the order appealed against is communicated to the appellant;
- (b) accompanied by a fee of ten thousand rupees where such appeal is filed by an assessee;
- (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any

case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which —

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

**260B. Case before High Court to be heard by not less than two Judges.**—(1) When an appeal has been filed before the High Court under Section 260A, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it”.

**59 to 60.** These sections amend sections 261 and 264 of the Income-tax Act, 1961, which amendments have been incorporated in the principal Act.

**61. Substitution of new section for section 271F.**— For section 271F of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 1999, namely:—

**“271F. Penalty for failure to furnish return of income.**—If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139, fails to furnish such return before the end of the relevant assessment year, he shall be liable to pay, by way of penalty, a sum of one thousand rupees:

Provided that a person who is required to furnish a return of his income, as required by the proviso to sub-section (1) of section 139, fails to furnish such return on or before the due date, he shall be liable to pay, by way of penalty, a sum of five hundred rupees”.

**62 to 74.**— These sections amend various sections of the Income-tax Act, 1961, which amendments have been incorporated in the principal Act.

### GIFT-TAX

**75.** This section amends section 3 of the Gift-tax Act, 1958, which amendment has been incorporated in the Gift-tax Act.

### WEALTH-TAX

**76. Application of the provisions of the Wealth-tax Act.**— (1) The provisions of sections 23, 24, 25, 28 and 29 of the Wealth-tax Act as amended and section 27A as inserted, by the Finance (No. 2) Act, 1998, shall apply with necessary modification as if the said provisions were referred to in the Gift-tax Act instead of the Wealth-tax Act.

(2) The Wealth-tax authorities as substituted by section 66 of the Finance (No. 2) Act, 1998 shall be deemed to be the Gift-tax authorities for the purposes of the Gift-tax Act.

## INTEREST-TAX

**77 to 80. Amendment of Act 45 of 1974.**— These sections amend various sections of the Interest-tax Act, 1974, which amendments have been incorporated in the principal Act.

## EXPENDITURE-TAX

**81 to 85. Amendment of Act 35 of 1987.**— These sections amend various sections of the Expenditure-tax Act, 1987, which amendments have been incorporated in the principal Act.

## CHAPTER IV

### KAR VIVAD SAMADHAN SCHEME, 1998

**86. Short title and commencement.**— (1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.

(2) It shall come into force on the 1st day of September, 1998.

**87. Definitions.**— In this Scheme, unless the context otherwise requires,—

(a) “declarant” means a person making a declaration under section 88;

(b) “designated authority” means,—

(i) where the tax arrear is under any direct tax enactment, an officer not below the rank of Commissioner of Income-tax and notified by the Chief Commissioner for the purposes of this Scheme;

(ii) where the tax arrear payable is under any indirect tax enactment, an officer not below the rank of Commissioner of Customs or the Commissioner of Central Excise and notified by the Chief Commissioner for the purposes of this Scheme;

(c) “disputed chargeable expenditure”, in relation to an assessment year, means the whole or so much of the chargeable expenditure as is relatable to the disputed tax;

(d) “disputed chargeable interest”, in relation to an assessment year, means the whole or so much of the chargeable interest as is relatable to the disputed tax;

(e) “disputed income”, in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(f) “disputed tax” means the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under section 88;

(g) “disputed wealth”, in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax;

(h) “direct tax enactment” means the Wealth-tax Act, 1957 or the Gift-tax Act, 1958 or the Income-tax Act, 1961 or the Interest-tax Act, 1974 or the Expenditure-tax Act, 1987;

(i) “disputed value of gift”, in relation to an assessment year, means the whole or so

#### Section 87

(1) Kar Vivad Samadhan Scheme is not applicable to cases under State Sales Tax Act. **2007 AIR SCW 3165 (3168).**

(2) Kar Vivad Samadhan Scheme (1998), Cl. 1 — Immunity from prosecution — Availability — Immunity granted is in relation to proceedings which have nexus with arrears of tax — Public servants who

can never file declaration under Scheme are not entitled to immunity. **2006 AIR SCW 5572 (5577) : 2007 (3) SCC (Cri) 337.**

(3) The determination of “tax arrears” as per its definition under S. 87(m) is that which was modified in appeal or revision and not the modification itself. **AIR 2003 SC 839 (840) : 2003 Tax LR 218 : 2003 AIR SCW 288.**

much of the value of gift as is relatable to the disputed tax;

(j) "indirect tax enactment" means the Customs Act, 1962 or the Central Excise Act, 1944 or the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 or the relevant Act and includes the rules or regulations made under such enactment;

(k) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority,

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses,

(viii) assessee, as defined in Rule 2 of the Central Excise Rules, 1944,

(ix) exporter as defined in clause (20) of section 2 of the Customs Act, 1962,

(x) importer as defined in clause (26) of section 2 of the Customs Act, 1962,

(xi) any person against whom proceedings have been initiated and are pending under any direct tax enactment or indirect tax enactment;

(l) "relevant Act" means an Act specified in the Schedule to this Scheme;

(m) "tax arrear" means,—

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

(ii) in relation to indirect tax enactment,—

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration under section 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject-matter of a demand notice or a show-cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration under section 88.

but does not include any demand relating to erroneous refund and where a show-cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

**Explanation.—** Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him under section 88 which includes any deposit made by him pending any appeal or in pursuance of a Court order in relation to such duties, cesses, interest, fine or penalty,

such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub-clause;

- (n) all other words and expressions used and not defined in this scheme but defined in any direct tax enactment or indirect tax enactment shall have the meanings respectively assigned to them in those enactments.

**88. Settlement of tax payable.**— Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates

### Section 88

(1) Non obstante clause under S. 88 of the Kar Vivad Samadhan Scheme cannot be interpreted to mean that even settled matters have to be reopened and benefit under the scheme should be extended to an assessee even with regard to the additional income. 2003 AIR Kant HCR 1778 : 2003 (183) Cur Tax Rep 260 (DB).

(2) Kar Vivad Samadhan Scheme — Declaration under S. 88 reaching designated authority after prescribed date — Allegation that said declaration was posted by assessee declarant under certificate of posting few days before the prescribed date is irrelevant and cannot be relied upon to claim benefit under the scheme — Provision of S. 3 of Post-office Act clearly indicates that merely by posting a letter does not amount to making a declaration to the designated authority under S. 88 of the Act. 2003 Tax LR 357 (359) : (2003) 260 ITR 315 (All).

(3) Kar Vivad Samadhan Scheme — Declaration by assessee before Designated Authority under scheme for settlement of tax arrears — Rejected on ground that his appeal was dismissed by Commissioner of Central Excise and, therefore, there was no appeal pending so as to extend benefit of scheme to assessee — Appeal against allowed holding that assessee appeal before Excise Commissioner was within time — Application by assessee again before Designated Authority for reconsideration of matter can be allowed since appeal is to be treated as pending. AIR 2007 SC (Supp) 752 (755) : 2007 AIR SCW 5218.

(4) When an appeal is dismissed for non-prosecution and order of dismissal is set aside, it will relate back to the date of original appeal. Thus on the date of filing assessee's declaration w/S. 88, the appeal is deemed to have been pending on the file of the appellate authority. 2004 (2) MPHT 57 (59) (DB).

(5) Kar Vivad Samadhan Scheme—Rejection of declaration - Revision against — Delay in filing — Unless delay was condoned, revision petition cannot

be held to be pending. 2005 (4) Ker LT 443 (448) : 2005 (100) Cur Tax Rep 83.

(6) Kar Vivad Samadhan Scheme — Benefit under — Scheme was in force only till 31-12-1998 — Writ petition filed by petitioner on 28-12-1998 was admitted only on 15-2-1999 — It cannot be said to be pending on 28-12-1998 — Petitioner not entitled to benefit under scheme. 2004 (3) Mad LJ 64 (65) : 2004 (117) ECR 281.

(7) Any person disputing the correctness of the customs duty as well as the penalty/interest demanded from him, could file a declaration under Kar Vivad Samadhan Scheme and if his declaration is found to be in accordance with the scheme, his liability in respect of balance 50% duty as well as penalty/interest would stand discharged. 2006 (2) AIR Bom R (NOC) 226 : 2006 (1) All MR 657 (660) (DB).

(8) Declaration under Kar Vivad Samadhan Scheme — Rejection by Dept. — Validity — Pre-condition for settlement of dispute under scheme is that there should be factual tax payable — NRI gifts sought to be taxed on protective basis — Would not come under Scheme as no tax arrears were pending on date of application — Rejection of application w/S. 88 — Justified. 2004 AIR Kant HCR 908 (909) : 2004 Tax LR 405.

(9) Kar Vivad Samadhan Scheme — Plea by appellant that since the sum of Rs. 45 lakhs has been paid prior to the issuance of show-cause notice, same could not be treated and consequently adjusted under scheme — Division Bench should not have entered into merits of dispute as same could prejudice either of parties — Impugned order is liable to be set aside. 2006 (194) ELT 20 (22) (SC).

(10) Where the tax was deposited within 30 days from last modified order, modifying rate of tax from 40% to 30% refusal to issue immunity certificate under the provisions of the Kar Vivad Samadhan Scheme was not proper. 2006 Tax LR 334 (338) : (2006) 1 MPLJ 199.

(11) When the due for the period of 10 years from the assessee having been settled under the Kar Vivad



specified hereunder, namely :—

- (a) where the tax arrear is payable under the Income-tax Act, 1961,—
  - (i) in the case of a declarant, being a company or a firm, at the rate of thirty-five per cent. of the disputed income;
  - (ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent. of the disputed income;
  - (iii) in the case where tax arrear includes income-tax, interest payable or penalty levied, at the rate of thirty-five per cent. of the disputed income for the persons referred to in clause (i) or thirty per cent. of the disputed income for the persons referred to in clause (ii);
  - (iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
  - (v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of the Income-tax Act,—
    - (A) in the case of a declarant, being a company or a firm, at the rate of forty-five per cent. of the disputed income;
    - (B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent. of the disputed income;
- (b) where the tax arrear is payable under the Wealth-tax Act, 1957,—
  - (i) at the rate of one per cent. of the disputed wealth;
  - (ii) in the case where tax arrear includes wealth-tax, interest or penalty levied, at the rate of one per cent. of the disputed wealth;
  - (iii) in the case where tax arrear includes only interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
  - (iv) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 37A or section 37B of the Wealth-tax Act, at the rate of two per cent. of the disputed wealth;
- (c) where the tax arrear is payable under the Gift-tax Act, 1958,—
  - (i) at the rate of thirty per cent. of the disputed value of the gift;
  - (ii) in the case where the tax arrear includes gift-tax, interest payable thereon or penalty levied, at the rate of thirty per cent. of the disputed value of the gift;
  - (iii) where the tax arrear includes only the interest payable or the penalty levied, at the rate of fifty per cent. of the tax arrear;
- (d) where the tax arrear is payable under the Expenditure-tax Act, 1987,—
  - (i) at the rate of ten per cent. of the disputed chargeable expenditure;
  - (ii) in the case where the tax arrear includes the disputed expenditure-tax, interest payable thereon and penalty levied, at the rate of ten per cent. of the disputed chargeable expenditure;

#### Section 88 (Contd.)

Samadhan Scheme, 1998 after issuance of two show-cause notices there is no scope for any further review or determination of that issue by any authority under

the Act—No further proceedings could be initiated or proceeded. 2006 AIR SCW 4825 (4831) : 2006 (7) SCC 642.

- (iii) in the case where the tax arrear comprises only the interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
- (e) where the tax arrear is payable under the Interest-tax Act, 1974,—
  - (i) at the rate of two per cent. of the disputed chargeable interest;
  - (ii) in the case where tax arrear includes the interest payable thereon or penalty levied, at the rate of two per cent. of the tax arrear;
  - (iii) in the case where tax arrear comprises only the interest or penalty levied, at the rate of fifty per cent. of the tax arrear;
- (f) where the tax arrear is payable under the Indirect tax enactment—
  - (i) in a case where the tax arrear comprises fine, penalty or interest but does not include duties (including drawback of duty, credit of duty or any amount representing duty) or cesses, at the rate of fifty per cent. of the amount of such fine, penalty or interest, due or payable as on the date of making a declaration under section 88;
  - (ii) in any other case, at the rate of fifty per cent. of the amount of duties (including drawback of duty, credit of duty or any amount representing duty) or cesses due or payable on the date of making a declaration under section 88.

**89. Particulars to be furnished in declaration.**— A declaration under section 88 shall be made, to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

**90. Time and manner of payment of tax arrear.**— (1) Within sixty days from the date of receipt of the declaration under section 88, the designated authority shall, by order, deter-

#### Section 90

(1) Immunity from prosecution under Kar Vivad Samadhan Scheme restricted under S. 90(1) only to direct tax enactment or indirect tax enactment. It does not refer to offences under Penal Code or under any other Central law. **2008 AIR SCW 5849 (5862) : AIR 2009 SC (Supp) 785.**

(2) Kar Vivad Samadhan Scheme is not applicable to cases under State Sales Tax Act. Only because the appellant had taken recourse to the scheme, the same would not attract either S. 90(3) or S. 91 thereof so as to cover a subject which is within the exclusive domain of the State Legislature. **2007 AIR SCW 3165 (3168) : 2007 (5) SCC 416.**

(3) A reading of S. 90(1) more particularly, the provisos to the said section would give a wider meaning, viz., the designated authority can revive the proceedings if any material furnished in the declaration is found to be false and he may amend the certificate for reasons to be recorded in writing. Therefore, it cannot be said that the matter covered by the order under S. 90(1) of the Act shall not be revived. **2007 293 ITR 394 (398) : 2008 (202) Taxation 603 (DB) Mad.**

(4) S. 90 provides for the time and manner of payment of tax arrear. The amount of arrear of tax is required to be determined within a period of sixty days from the date of receipt of the declaration under S. 91, whereupon a certificate is to be granted in such form as may be prescribed the certificate is granted only to

the declarant, which would contain the particulars of tax arrears and the sum payable after such determination towards full and final settlement of tax arrears. **2006 AIR SCW 5572 (5578).**

(5) A certificate issued under S. 90(1) of the Kar Vivad Samadhan Scheme (KVSS) making a determination as to the sum payable under the KVSS, is conclusive as to the matter stated therein and cannot be reopened in any proceedings under any law for the time being in force, except on the ground of false declaration by any declarant. **AIR 2002 SC 823 (825) : 2002 AIR SCW 485 \*\* 2008 (5) AIR Kar R 46 (54) (DB).**

(6) A certificate determining the sum payable under the Kar Vivad Samadhan Scheme under S. 90(1) is conclusive in the sense, that a settlement in terms thereof is binding on the department as well as the assessee. The department may not claim the amount that has been waived under the scheme, by initiation of fresh proceedings. **2010 (1) Cal LT 120 (130) \*\* 2010 (323) ITR 262 (DB) (All).**

(7) When the declarant makes payment of the amount so determined under S.90, the immunity under S. 91 springs into effect. **AIR 2003 SC 312 : 2003 Tax LR 7 : 2002 AIR SCW 4792.**

(8) Kar Vivad Samadhan Scheme — Payment of required amount under the scheme made on next working day after last date — Assessee by mistake went to Income-tax Department on Saturday and

mine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears :

Provided that where any material particular furnished in the declaration is found to be false by the designated authority at any stage, it shall be presumed as if the declaration was never made and all the consequences under the direct tax enactment or Indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived :

Provided further that the designated authority may amend the certificate for reasons to be recorded in writing.

(2) The declarant shall pay the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show-cause notice against any order or notice giving rise to the tax arrear before any authority or tribunal or Court, then, notwithstanding anything contained in any other provisions of any law for the

#### Section 90 (Contd.)

immediately on Monday he made payment in Nationalised Bank as required under the scheme — Clearance certificate to assessee cannot be denied on ground of delay in payment — Provision of S. 90 will have to be read flexibility in interest of assessee to permit genuine explanations for delay in payment. 2003 Tax LR 166 (170) : (2002) 257 ITR 649 (Bom).

(9) Kar Vivad Samadhan Scheme — Designated authority had determined amount to be paid by declarant — Payment be made within a period of 30 days from the date of order — Petitioner not making payment within stipulated date not entitled to benefit under scheme — No specific provision for condonation of delay exists in scheme — Order of designated authority declining to issue certificate to petitioner would be proper. 2005 Tax LR 901 (903) : 2006 (153) Taxman 405 (DB) (Guj).

[See also 2004 AIR Kant HCR 1039 (1043) : 2004 Tax LR 503. (Amount determined by designated authority under S. 90(2) paid by declarant six days beyond period of limitation of 30 days — Benefit of scheme cannot be given to declarant/assessee — Provisions of scheme has to be strictly viewed — Writ of certiorari cannot be issued for quashing order of designated authority. (1999) 238 ITR 97 (P & H), Not followed in view of 2003 AIR SCW 3095.) \*\* 2003 AIR Kant HCR 2545 (2552) : 2004 Tax LR 1158. Payment of tax arrears — Time cannot be granted on ground of equity — Difference between Voluntary Disclosure Scheme (1997) and Kar Vivad Scheme (1998) namely that 1997 Scheme has provided for

interest, cannot be invoked for extension of time.]]

(9A) The limitation prescribed in S. 90 (2) is only the time limit for making payment from the original order of determination and it does not speak of any time limit from the date of the amendment order. (2011) 333 ITR 512 (522)(Mad).

(10) Where the tax was deposited within 30 days from last modified order, modifying rate of tax from 40% to 30% refusal to issue immunity certificate was not proper. 2006 Tax LR 334 (338) : (2006) 1 MPLJ 199.

(11) Kar Vivad Samadhan Scheme (KVSS) — Requirement of pendency of appeal, revision etc. — Appeal filed before Tribunal — Subsequently, order under S. 90(2) KVSS passed — Subsequent decision of said appeal on merits was improper — In view of S. 90(4), said appeal shall be deemed to have been withdrawn. 2007 Tax LR 188 (193) : 2006 (157) Taxman 67 (DB) (MP).

(12) Kar Vivad Samadhan Scheme — Provisions of S. 90 authorise the designated authority to decide about merits of a pending appeal or reference or writ petition. 2002 (150) ELT 48 (50) (Mad).

(13) Kar Vivad Samadhan Scheme — Declaration wrongly rejected by Designated Authority — On subsequent setting aside of its order tax arrears, disputed amount and amount payable for each year were assessed and thereafter assessee paying same — Delay in payment — Assessee not liable to pay interest as his liability accrued only after ascertainment of amount by Designated Authority. AIR 2005 SC 3995 (3996) : 2005 AIR SCW 4699.

time being in force, such appeal or reference or reply shall be deemed to have been withdrawn on the day on which the order referred to in sub-section (2) is passed :

Provided that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, furnish proof of such withdrawal along with the intimation referred to in sub-section (2).

**91. Immunity from prosecution and imposition of penalty in certain cases.**— The designated authority shall, subject to the conditions provided in section 90, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 88.

**92. Appellate authority not to proceed in certain cases.**— No appellate authority shall proceed to decide any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made under section 90 by the designated authority or the payment of the sum determined under that section :

Provided that in case an appeal is filed by a Department of the Central Government in respect of such issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear (except where the tax arrear comprises only penalty, fine or interest) the appellate authority shall decide the appeal irrespective of such declaration.

#### Section 90 (Contd.)

(14) S. 90(3) bars reopening of the matter covered under the order in any "other proceedings" under the Direct-tax Act. The revisional jurisdiction of the Commissioner of Income-tax under S. 263 of the Income-tax Act in the matter *Kar Vivad Samadhan Scheme* cannot be said to be other proceedings. 2008 (302) ITR 268 (273) (DB) (Utr).

(15) An order under S. 90(1) in view of S. 90(3) be reopened in any other proceedings S. 90(3) does not, however, bar the review and/or amendment of an erroneous order in the same proceedings. 2010 (1) Cal LT 120 (130).

(16) *Kar Vivad Samadhan Scheme* (1998), Cl. 1 — Payment of tax arrears — Scheme does not provide for adjustment of such arrears against refund due to assessee — S. 245 of Income-tax Act providing for set off of refund or clarification on said scheme issued by Dept. cannot be invoked for purpose of permissibility of such adjustment. 2003 AIR Kant HCR 2545 (2550) : 2004 Tax LR 1158.

(17) Where a declaration under S. 90 under *Kar Vivad Samadhan Scheme* was granted to the assessee, the department's appeal under S. 253 of the Income-tax Act (1961) shall not survive. 2006 Tax LR 661 (665) : (2006) 195 Taxation 651 (MP).

#### Section 91

(1) When the declarant makes payment of the amount so determined under S. 90, the immunity un-

der S. 91 springs into effect. AIR 2003 SC 312 (316) : 2003 Tax LR 7 : 2003 AIR SCW 4792.

(2) S. 91 only gives immunity in respect of matters covered in the declaration by the company is the "tax arrears" of the company. The declaration by the company admittedly does not cover the tax arrears of the Directors/officers. Thus they get no immunity under S. 91 on a settlement by the company. AIR 2002 SC 3563 (3567) : 2003 Tax LR 222 : 2002 AIR SCW 4179.

(3) A determination might have been made although the scheme was not applied, but the same may not per se confer a right of obtaining any immunity in terms of S. 91 of the Act. 2006 AIR SCW 5572 (5578) : 2007 (3) SCC (Cri) 337.

#### Section 92

(1) A declaration made in terms of the *Kar Vivad Samadhan Scheme* is required to be considered with respect to the tax arrears pertaining to that assessment year irrespective of whether the dispute was in question in an appeal preferred by the assessee or in an appeal preferred by the Revenue. 2008 (5) AIR Kar R 46 (54) (DB).

(2) A reading of proviso to S. 92 does show that where an appeal is filed by a Department of the Central Government in relation to an issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputable income, disputed wealth, disputed



**93. No refund of amount paid under the Scheme.**— Any amount paid in pursuance of a declaration made under section 88 shall not be refundable under any circumstances.

**94. Removal of doubts.**— For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 90, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than those in relation to which the declaration has been made.

**95. Scheme not to apply in certain cases.**— The provisions of this Scheme shall not apply—

- (i) in respect of tax arrear under any direct tax enactment.—
- (a) in a case where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 88 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment or in respect of a person who has been convicted for concealment on or before the date of filing the declaration;
- (b) in a case where an order has been passed by the Settlement Commission under sub-section (4) of section 245D of the Income-tax Act or sub-section (4) of section 22D of the Wealth-tax Act, as the case may be, for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;
- (c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court on the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration;

#### Section 92 (contd.)

value of gift or tax arrear etc., the appellate authority is enjoined with the obligation to decide the appeal irrespective of the declaration. 2006 Tax LR 661 (664) : (2006) 195 Taxation 651 (MP).

(3) Kar Vivad Samadhan Scheme, 1998 — Declaration were made on 14-1-1998 — Revisions were pending at that time, same having been filed on 27-8-1998 — Fact that revisions were later dismissed on 17-11-1998 and respondent took up declaration for consideration for granting benefit under scheme only on 18-11-1998 i.e. after dismissing revisions of petitioners is no ground for rejecting claim under Scheme. 2007 (201) Taxation 552 (554) : 2007 (295) ITR 57 (Ker).

#### Section 93

(1) The provisions of S. 93 only govern the amount which is due under the scheme of Kar Vivad Samadhan. 2004 (191) Cur Tax Rep 103 (105) (DB) (P & H).

(2) Kar Vivad Samadhan Scheme — Refund of excess amount — Inclusion of amount under scheme in total demand by designated authority — Entire demand amount deposited under protest — Error in calculation rectified by designated authority — Excess amount directed to be refunded. 2005 (274) ITR 17 (20) : 2004 (4) Rec Civ R 277 (DB) (P & H).

#### Section 95

(1) S. 95 provides an exception to the scheme —

Once the provisions of S. 95 are attracted, the scheme shall not apply. S. 95(iii) would be attracted if any prosecution for any offence enumerated thereunder has been instituted on or before the filing of the declaration. 2006 AIR SCW 5572 (5578) : 2007 (3) SCC (Cri) 337 \*\* 2004 Cri LJ 2802 (2808) : 2004 Mad LJ (Cri) 392.

(2) Kar Vivad Samadhan Scheme — Order passed by Settlement Commission in case of partnership firm — Partners prohibited from approaching designated authority under the scheme qua the share income from the said firm but they can approach the said authority qua the other income is concerned. 2003 Tax LR 250 (254) : (2002) 258 ITR 308 (Guj).

(3) Not all "tax arrears" under S. 87(m) are entitled to benefit of the Kar Vivad Samadhan Scheme. If no appeal etc. is pending in respect of tax arrears, the benefit of the scheme is not available under S. 95(i)(c). AIR 2003 SC 839 (842) : 2003 Tax LR 218 : 2003 AIR SCW 288.

(4) Word 'pending' occurring under S. 95(i)(c) of the Kar Vivad Samadhan Scheme — Meaning of — Mere fact that such an appeal/revision, subsequently is held to be unmaintainable on any ground whatsoever it does not mean that there was no appeal/revision pending. AIR 2005 SC 4000 (4004) : 2005 AIR SCW 4693 \*\* 2010 (326) ITR 402 (Para 7) (DB) (Guj).

[See 2004 (271) ITR 152 (158) : 2005 (185) Taxation 396 (DB) (MP). (Appeal or writ petition should



(ii) in respect of tax arrear under any indirect tax enactment.—

(a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the date of filing of the declaration under section 88, in respect of any tax arrear in respect of such case under such indirect tax enactment;

(b) in a case where show-cause notice or a notice of demand under any indirect tax enactment has not been issued;

(c) in a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court or no application for revision is pending before the Central Government on the date of declaration made under section 88;

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Foreign Exchange Regu-

#### Section 95 (contd.)

be admitted and pending.) \*\* 2003 Tax LR 1013 (1014) (Raj).]

[See also 2005 Tax LR 179 (186) : 2005 (274) ITR 155 (DB) (All). (It is immaterial as to whether it has been filed beyond time or is not in prescribed term.)]

(5) Kar Vivad Samadhan Scheme — Applicable in case writ petition is admitted and pending — Writ petition is admitted only when Court on application of judicial mind finds *prima facie* case which requires elaborate hearing — Hence when writ petition of declarant was admitted after considering controversy with respect to its admission raised by respondents the petition shall be held as pending on date of filing of declaration and declarant is entitled to get benefit under the scheme. 2003 Tax LR 1013 (1015) : 2002 (258) ITR 663 (DB) (Raj).

(6) S. 95(i)(c) uses the expression “admitted and pending” insofar as the appeal are concerned, but uses only the word “pending” as far as the revisions are concerned. Hence the expression “pending” means “factually pending” and it cannot be said that unless the delay in filing a revision application is condoned, it cannot be said that the revision application was pending. 2003 Tax LR 184 (196) : (2003) 259 ITR 149, (Guj). (1999 Tax LR 537 (Kant) and (1999) 239 ITR 11 (Cal), *Held per incuriam*.)

(7) Benefit in terms of Kar Vivad Samadhan Scheme cannot be availed merely on presentation of petition for reference. It must have been admitted and pending on date of declaration under scheme. The legislature consciously used the terms “admitted” and “pending” in S. 95(i)(c) which clearly postulates that the dispute concerned must have been found *prima facie* considerable by the Court otherwise there was no need to prefix “admitted” before the term “pending”. The term “admitted” means taking cognizance of an issue by application of mind for its adjudication. 2010 Tax LR 256 (258) : 2010 (1) WLC 588

(Raj).

(8) The word “pending” has been used in S. 95(ii)(c) as a matter of moment and the deemed pendency of the appeal cannot be read into it. 2006 (2) AIR Bom R 608 (611) : 2006 (3) Bom.CR 184 (DB).

(9) Kar Vivad Samadhan Scheme — Declaration under — For consideration pendency of proceeding before concerned authority is necessary pre-condition — Petition filed for waiver of interest before Commissioner — Can be treated as revision though waiver is within domain of Chief Commissioner. — Thus there being pendency of revision, declaration under Scheme is maintainable. 2004 Tax LR 133 (135) : 2004 (1) Ker LJ 219 (DB).

(10) Clauses (b) and (c) of sub-section (ii) of S. 95 specifically stipulates that in case where no show-cause notice or demand notice has been issued and in case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court, the provisions of the KVS Scheme will not apply. 2005 Bom CR (Supp) 719 (731) (DB).

(11) Condition pre-requisite for applicability of Kar Vivad Samadhan Scheme is that appeal should be pending on day of filing declaration where appeal was disposed of and order was yet to be received on date of filing declaration, it cannot be interpreted that appeal was pending because of non-receipt of order. S. 95 uses double negative and, therefore, has to be given plain meaning and there is no room for equity or any other construction on ground of hardship. 2006 (2) AIR Bom R 608 (613) : 2006 (1) Bom LR 369.

(12) Kar Vivad Samadhan Scheme (KVSS) — Requirement of pendency of appeal, revision etc. — Appeal filed before Tribunal — Subsequently order under S. 90(2) KVSS passed — Subsequent decision on said appeal on merits was improper — In view of S. 90(4), said appeal shall be deemed to have been withdrawn. 2007 Tax LR 188 (193) : 2006 (157) Taxman 67 (DB) (MP).

lation Act, 1973, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988, or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;

- (iv) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Provided that—

- (a) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
- (b) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or
- (c) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or
- (d) such order of detention has not been set aside by a court of competent jurisdiction;
- (v) to any person notified under sub-section (2) of section 3 of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992.

**96. Power of Central Government to issue directions.**— (1) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government :

Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Central Government may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the Central Government is of the opinion that it is necessary in the public interest so to do, be published in the prescribed manner.

**97. Power to remove difficulties.**— (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

**98. Power to make rules.**— (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the form in which a declaration may be made under section 88 and the manner in which such declaration may be verified;
- (b) the form of certificate which may be granted under sub-section (1) of section 90;
- (c) the manner in which the orders may be published under sub-section (2) of section 96;
- (d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### THE SCHEDULE

[See section 87 (1)]

1. The Agricultural Produce Cess Act, 1940
2. The Coffee Act, 1942.
3. The Mica Mines Labour Welfare Fund Act, 1946.
4. The Rubber Act, 1947.
5. The Industries (Development and Regulation) Act, 1951.
6. The Salt Cess Act, 1953.
7. The Tea Act, 1953.
8. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
9. The Additional Duties of Excise (Goods of Special Importance) Act, 1957.
10. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958.
11. The Sugar Export Promotion Act, 1958.
12. The Sugar (Special Excise Duty) Act, 1959.
13. The Sugar (Regulation of Production) Act, 1961.
14. The Textiles Committee Act, 1963.
15. The Produce Cess Act, 1966.
16. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
17. The Marine Products Export Development Authority Act, 1972.
18. The Coal Mines (Conservation and Development) Act, 1974.
19. The Oil Industry (Development) Act, 1974.
20. The Tobacco Cess Act, 1975.
21. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976.
22. The Beedi Workers Welfare Cess Act, 1976.
23. The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.
24. The Sugar Cess Act, 1982.
25. The Jute Manufacturers Cess Act, 1983.
26. The Agricultural and Processed Food Products Export Cess Act, 1985.

27. The Spices Cess Act, 1986.

28. Any other enactment imposing the auxiliary duty of customs or the special duty of excise.

## CHAPTER V

### INDIRECT TAXES

#### Customs

**99 to 102. Amendment of Act 52 of 1962.**— These sections amend various sections of Customs Act, 1962 which amendments have been incorporated in the principal Act.

**103. Additional duty of customs (motor spirit).**— (1) In the case of goods specified in the Second Schedule, being goods imported into India, there shall be levied and collected as an additional duty of customs an amount calculated at the rate set forth in the said Schedule.

(2) The additional duty of customs referred to in sub-section (1) shall be in addition to any other duties of customs chargeable on such goods under the Customs Act, or any other law for the time being in force.

(3) The provisions of the Customs Act and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of customs leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of customs on such goods under that Act or those rules and regulations, as the case may be.

**104. Amendment of Act 51 of 1975.**— This section amends section 3 of the Customs Tariff Act, 1975 which amendment has been incorporated in the principal Act.

#### Excise

**105 to 111. Amendment of Act 1 of 1944.**— These sections amend various sections of Central Excise Act, 1944, which amendments have been incorporated in the principal Act.

**112. Amendment of Act 5 of 1986.**— This section amends various Chapters of the Central Excise Tariff Act, 1985, which have been incorporated in the principal Act.

**113. Amendment of Act 58 of 1957.**— The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act) shall be amended in the manner specified in the Fifth Schedule.

**114. Amendment of Act 40 of 1978.**— The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (hereinafter referred to as the Additional Duties of Excise (Textiles and Textile Articles) Act), shall be amended in the manner specified in the Sixth Schedule.

**115. Amendment of Act 16 of 1955.**— In the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in the Schedule, in item No. 4 for the entry in the third column, the entry "fifty per cent. ad valorem" shall be substituted.

## CHAPTER VI

### SERVICE TAX

**116. Amendment of Act 32 of 1994.**— This section amends various sections of the Finance Act, 1994, which have been incorporated in the principal Act.

## CHAPTER VII

### MISCELLANEOUS

**117. Omission of section 37 of Act 28 of 1981.**— In the Export-Import Bank of India Act, 1981, section 37 shall be omitted with effect from the 1st day of April, 1999.

**118. Amendment of Act 6 of 1898.**— This section amends First Schedule of the Post-office Act, 1898, which amendment have been incorporated in the principal Act.

**119. Repeal.**— The Finance Act, 1998 is hereby repealed and shall be deemed never to

have been enacted.

## "THE FIRST SCHEDULE

(See section 2)

### PART I

#### INCOME-TAX

##### Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

##### Rates of income-tax

- |   |  |
|---|--|
| 1) where the total income does not exceed Rs. 40,000                          | Nil;   |
| 2) where the total income exceeds Rs. 40,000 but does not exceed Rs. 60,000   | 10 per cent. of the amount by which the total income exceeds Rs. 40,000;                   |
| 3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 2,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000;    |
| 4) where the total income exceeds Rs. 1,50,000                                | Rs. 20,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000; |

##### Paragraph B

In the case of every co-operative society,—

##### Rates of income-tax

- |   |   |
|---|---|
| (1) where the total income does not exceed Rs. 10,000.                        | 10 per cent. of the total income;   |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000. | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000                                 | Rs. 3,000 plus 35 per cent. of the amount by which the total income exceeds Rs. 20,000. |

##### Paragraph C

In the case of every firm,—

##### Rates of Income-tax

On the whole of the total income 35 per cent.

##### Paragraph D

In the case of every local authority,—

##### Rates of Income-tax

On the whole of the total income 30 per cent.

##### Paragraph E

In the case of a company,—

##### Rates of Income-tax

- I. In the case of a domestic company 35 per cent. of the total income;
- II. In the case of a company other than a domestic company—
  - (i) on so much of the total income as consists of—
    - (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Govern-



ment or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

- (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976.

and where such agreement has, in either case, been approved by the Central Government 50 per cent.;

- (ii) on the balance, if any of the total income 48 per cent.;

## PART II

### RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to deduction at the following rates :—

	Rate of Income-tax
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent.;
(ii) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(iii) on income by way of winnings from horse races	40 per cent.;
(iv) on income by way of insurance commission	10 per cent.;
(v) on income by way of interest payable on—	10 per cent.;
(A) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and any rules made thereunder;	
(vi) on any other income	20 per cent.;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent.;
(B) on income by way of long-term capital gains referred to in Section 115E	10 per cent.;
(C) on other income by way of long-term capital gains	20 per cent.;
(D) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(E) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(F) on income by way of winnings from horse races	40 per cent.;
(G) on the whole of other income	30 per cent.;
(ii) in the case of any other person,—	
(A) on income by way of interest payable by Government or an Indian con-	20 per cent.;

- |   |               |
|---|---------------|
| ern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency |               |
| (B) on income by way of winnings from lotteries and crossword puzzles                           | 40 per cent.; |
| (C) on income by way of winnings from horse races   | 40 per cent.; |
| (D) on income by way of long-term capital gains   | 20 per cent.; |
| (E) on the whole of the other income  | 30 per cent.; |
2. In the case of a company—
- (a) where the company is a domestic company—
- |  |               |
|--|---------------|
| (i) on income by way of interest other than "Interest on securities"   | 20 per cent.; |
| (ii) on income by way of winnings from lotteries and crossword puzzles | 40 per cent.; |
| (iii) on income by way of winnings from horse races                    | 40 per cent.; |
| (iv) on any other income   | 20 per cent.; |
- (b) where the company is not a domestic company—
- |  |               |
|--|---------------|
| (i) on income by way of winnings from lotteries and crossword puzzles  | 40 per cent.; |
| (ii) on income by way of winnings from horse races   | 40 per cent.; |
| (iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency  | 20 per cent.; |
| (iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India— | 30 per cent.; |
| (A) where the agreement is made before the 1st day of June, 1997   | 30 per cent.; |
| (B) where the agreement is made on or after the 1st day of June, 1997  | 20 per cent.; |
| (v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b) (iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—   |               |
| (A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976  | 50 per cent.; |
| (B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997   | 30 per cent.; |
| (C) where the agreement is made on or after the 1st day of June, 1997  | 20 per cent.; |
| (vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agree-   |               |

ment is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976. 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997. 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997. 20 per cent.;

(vii) on income by way of long-term capital gains 20 per cent.;

(viii) on any other income 48 per cent.;

**Explanation.**— For the purpose of item I(b)(i) of this Part, “Investment income” and “non-resident Indian” shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

### PART III

#### RATES FOR CALCULATING OR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM THE INCOME CHARGEABLE UNDER THE HEAD “SALARIES” AND COMPUTING “ADVANCE TAX”

In cases in which Income-tax has to be calculated under the first proviso to sub-section (5) of section 132 of the Income-tax Act or charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the said Act or deducted under section 192 of the said Act from income chargeable under the head “Salaries” or in which the “advance tax” payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, “advance tax” (not being “advance tax” in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or Section shall be calculated, charged, deducted or computed at the following rate or rates :—

#### Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

#### Rates of income-tax

- |  |  |
|--|--|
| (1) where the total income does not exceed Rs. 50,000                          | Nil;   |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000   | 10 per cent. of the amount by which the total income exceeds Rs. 50,000;                   |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 60,000;    |
| (4) where the total income exceeds Rs. 1,50,000                                | Rs. 19,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000; |

#### Paragraph B

In the case of every co-operative society,—

#### Rates of income-tax

- |   |   |
|---|---|
| (1) where the total income does not exceed Rs. 10,000.                        | 10 per cent. of the total income;   |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000. | Rs. 1,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000.                                | Rs. 3,000 plus 35 per cent. of the amount by which the total income exceeds Rs. 20,000. |

#### Paragraph C

In the case of every firm,—

#### Rate of income-tax

On the whole of the total income 35 per cent.

**Paragraph D**

In the case of every local authority,—

**Rate of income-tax**

On the whole of the total income 30 per cent.

**Paragraph E**

In the case of a company,—

**Rates of income-tax**

I. In the case of a domestic company 35 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976.

and where such agreement has, in either case, been approved by the Central Government 50 per cent.;

(ii) on the balance, if any of the total income 48 per cent.;

**PART IV**

[See section 2 (10) (c)]

**RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME**

**Rule 1.**—Agricultural income of the nature referred to in sub-clause (a) of clause (1 A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly :

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

**Rule 2.**—Agricultural Income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

**Rule 3.**—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

**Rule 4.**—Notwithstanding anything contained in any other provisions of these rules, in a case where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee.

**Rule 5.**— Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income, then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

**Rule 6.**— Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set-off against the income of the assessee, if any, for that previous year from any other source of agricultural income :

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set-off against any income of the assessee from any other source of agricultural income.

**Rule 7.**— Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

**Rule 8.**— (1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 1998, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1990 or the 1st day of April, 1991 or the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

- (i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1990 to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1991 or the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,
- (ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1991, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,
- (iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1992, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,
- (iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,
- (v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,
- (vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997,
- (vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997,
- (viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, shall be set-off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 1998.



(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or, if by virtue of any provision of the Income-tax Act, income-tax, is to be charged in respect of the income of a period other than that previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1991 or the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998, is a loss, then, for the purposes of sub-section (9) of section 2 of this Act,—

- (i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1991, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,
- (ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of April, 1992, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,
- (vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,
- (iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,
- (v) the loss so computed for the previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of April, 1995, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,
- (vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998,
- (vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set-off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998,
- (vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, shall be set-off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 1999.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set-off under sub-rule (1), or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in Part IV of the First Schedule to the Finance Act, 1990 (12 of 1990), or of the first Schedule to the Finance (No. 2) Act, 1991 (49 of 1991), or of the First Schedule to the Finance Act, 1992 (18 of 1992), or of the First Schedule to the Finance Act, 1993 (38 of 1993), or of the First Schedule to the Finance Act, 1994 (32 of 1994), or of the First Schedule to the Finance Act, 1995 (22 of 1995), or of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996) or of the First Schedule to the Finance Act, 1997 (26 of 1997), shall be set-off under sub-rule (1), or, as the case may be, sub-rule (2).

Rule 9.— Where the net result of the computation made in accordance with these rules is a loss, the

loss so computed shall be ignored and the net agricultural income shall be deemed to be nil.

**Rule 10.**— The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

**Rule 11.**— For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the income-tax for the purposes of assessment of the total income.

### **THE SECOND SCHEDULE**

[See sections 103 (1) and 111 (1)]

This Schedule specifies additional duty of customs (motor spirit) which has been incorporated in the Customs Act, 1962.

### **THE THIRD SCHEDULE**

[See section 104 (b)]

This Schedule amends various Chapters of the Customs Tariff Act, 1975, which amendments have been incorporated in the principal Act.

### **THE FOURTH SCHEDULE**

[See section 112]

This Schedule amends various Chapters of the Central Excise Tariff Act, 1985, which have been incorporated in the principal Act.

### **THE FIFTH SCHEDULE**

[See section 113]

This Schedule amends various entries in the First Schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, which amendments have been incorporated in the principal Act.

### **THE SIXTH SCHEDULE**

[See section 114]

This Schedule amends certain entries in the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, which have been incorporated in the principal Act.