DIVISION 1 — INCOME-TAX RULES, 1962

Arrangement of Rules

*Heading No. 'DA' is provided by Editor.

†Should be read as 'DD'.

INCOME-TAX RULES, 1962*

[SO 969, DATED 26-3-1962]

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), and rule 15 of Part A, rule 11 of Part B and rule 9 of Part C of the Fourth Schedule to that Act, the Central Board of Revenue hereby makes the following rules, namely:—

PART I

PRELIMINARY

Short title and commencement.

1. (1) These rules may be called the Income-tax Rules, 1962.

(2) They shall come into force on the 1st day of April, 1962.

Definitions.

2. (1) In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Income-tax Act, 1961 (43 of 1961);

[1][(*aa*) "authorised bank" means any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section (1) of section 45 of the Reserve Bank of India Act, 1934 (2 of 1934);]

(*b*) "Chapter", "section" and "Schedule" means respectively Chapter and section of, and Schedule to, the Act.

Rules, which have been either substituted or inserted or amended by the Amending Rules notified since 1962, are annotated and indicated in the footnotes. To highlight the amendments notified during 2020 and 2021, the affected rules are printed in italics. The compendium has been enriched by incorporating therein at appropriate places latest relevant case laws and clarifications issued by the CBDT.

Section 4 of the Finance (No. 2) Act, 2014 provides as under :

"In the Income-tax Act, save as otherwise expressly provided, and unless the context otherwise requires, the reference to any income-tax authority specified in column (1) of the Table below shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013 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 be made:

TABLE

Sl. No.	*(1)*	*(2)*
1.	Commissioner	Principal Commissioner or Commissioner
2.	Director	Principal Director or Director
3.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner
4.	Director General	Principal Director General or Director General

CBDT has not yet issued any Income-tax (Amendment) Rules to effectuate the consequential changes to be made in the Income-tax Rules.

1. Inserted by the IT (Sixth Amdt.) Rules, 1981, w.e.f. 19-6-1981.

(2) All references to "Forms" in these rules shall be construed as references to the forms set out in Appendix II hereto.

PART II

DETERMINATION OF INCOME

A.—Salaries

[2][**Limits for the purposes of section 10(*13A*).**

2A. The amount which is not to be included in the total income of an assessee in respect of the special allowance referred to in clause (*13A*) of section 10 shall be—

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2. Inserted by the IT (Amdt.) Rules, 1965, w.e.f. 1-4-1965.

House rent allowance is normally taxable as income under the head "Salaries" - *Karamchari Union* v. *Union of India* [2000] 243 ITR 143/109 Taxman 1 (SC). Rule 2A does not in any way run counter to the provisions of the Act - *CIT* v. *H.V. Yazdi* [1978] 114 ITR 14 (Cal.). House rent allowance paid to an employee who is residing in his own house is not eligible for any exemption - *CIT* v. *K. Balasubramanian* [1999] 106 Taxman 117 (Bom.)/*Patil Vijaykumar* v. *Union of India* [1985] 151 ITR 48/20 Taxman 363 (Kar.)/*All India Lakshmi Commercial Bank Officers' Union* v. *Union of India* [1984] 150 ITR 1/[1985] 20 Taxman 412 (Delhi)/*CIT* v. *P.D. Singhania* [2006] 156 Taxman 504 (All.)/CBDT Letter No. F. 12/19/64-IT(A-I), dated 2-1-1967. [Earlier views to the contrary taken in *CIT* v. *Justice S.C. Mittal* [1980] 121 ITR 503/3 Taxman 221 (Punj. & Har.), *CIT* v. *B.R. Tuli* [1980] 125 ITR 460 (Punj. & Har.) and *CIT* v. *M.S. Gujral* [1980] 125 ITR 655/3 Taxman 364 (Punj. & Har.) have been statutorily superseded by the retrospective insertion of the *Explanation* to section 10(*13A*)]. 'Salary' will include dearness pay if such pay is treated as 'pay' for purposes of pension, gratuity and compensatory allowances including house rent allowance - *Circular No. 90, dated 26-6-1972.* Commission based on sales paid in addition to salary as part of the contract of employment will be 'salary' - *Gestetner Duplicators (P.) Ltd.* v. *CIT* [1979] 117 ITR 1/1 Taxman 1 (SC). 'Salary' includes commission even if it is paid with reference to profits - *Raja Ram Kumar Bhargava* v. *CIT* [1963] 47 ITR 680 (All.). Contractual bonus will form part of 'salary' - *Circular No. 80, dated 4-3-1972.* For the purpose of rule 2A, salary will not include bonus - *CIT* v. *B. Ghosal* [1980] 125 ITR 744/4 Taxman 55 (Ker.). 'Salary' will include bonus after the passing of the Payment of Bonus Act - *CIT* v. *India Radiators Ltd.* [1976] 105 ITR 680 (Mad.). Retired Judge appointed to any post under State/Central Government is not entitled to exemption on HRA - *Justice Challa Kondiah* v. *CIT* [2001] 119 Taxman 511 (AP). Assessee was entitled to claim deduction under section 10(*13A*) on basis of rent paid by him which had been debited from his salary directly - *CIT* v. *UK Bose* [2013] 29 taxmann.com 219/212 Taxman 399 (Delhi). Assessee living with his wife in house occupied by her and paying rent to her through bank transfers would be entitled to exemption under section 10(*13A*) - *Bajrang Prasad Ramdharani* v. *Asstt. CIT* [2013] 37 taxmann.com 186/60 SOT 66 (URO) (Ahd.-Trib.). HRA exemption claim could not be allowed under section 10(*13A*) based on sham rent payments supported only by rent receipts from mother and where assessee had not produced any evidence arising in normal course of transaction of hiring premises - *Mrs. Meena Vaswani* v. *Asstt. CIT* [2017] 80 taxmann.com 2/164 ITD 120 (Mum. - Trib.). It has to be noted that only the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the assessee subject to the limits laid down in Rule 2A, qualifies for exemption from income-tax. Thus, house rent allowance granted to an employee who is residing in a house/flat owned by him is not exempt from Income-tax.

As discussed in para 4.6.5 section 192(2D) read with rule 26C makes it obligatory for the DDO to obtain following details/evidences in respect of exemptions for house rent allowance.

(*i*) Rent paid to the landlord

(*ii*) Name of the landlord

(*iii*) Address of the landlord

(*iv*) PAN or Aadhaar Number as the case may be, of the landlord.

Where the aggregate rent paid during the financial year exceeds one lakh rupees the employee is required to furnish these details in Form 12BB. - *Para 5.3.9 of Circular No. 4/2020, dated 16-1-2020.* For details, *see* Taxmann's Master Guide to Income-tax Rules.

(*a*) the actual amount of such allowance received by the assessee in respect of the relevant period; or

(*b*) the amount by which the expenditure actually incurred by the assessee in payment of rent in respect of residential accommodation occupied by him exceeds one-tenth of the amount of salary due to the assessee in respect of the relevant period; or

[3][(*c*) an amount equal to—

(*i*) where such accommodation is situate at Bombay, Calcutta, Delhi or Madras, one-half of the amount of salary due to the assessee in respect of the relevant period; and

(*ii*) where such accommodation is situate at any other place, two-fifth of the amount of salary due to the assessee in respect of the relevant period,]

(*d*) [4][***]

whichever is the least.

Explanation.—In this rule—

(*i*) "salary" shall have the meaning assigned to it in clause (*h*) of rule 2 of Part A of the Fourth Schedule;

(*ii*) "relevant period" means the period during which the said accommodation was occupied by the assessee during the previous year.]

(*iii*) [5][***]

[6]**[Conditions for the purpose of section 10(5).**

2B. (1) The amount exempted under clause (5) of section 10 in respect of the value of travel concession or assistance received by or due to the individual from his employer or former employer for himself and his family, in connection with his proceeding,—

(*a*) on leave to any place in India;

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3. Substituted by the IT (Fourth Amdt.) Rules, 1986, w.e.f. 1-4-1987. Original clause (*c*) was first substituted by the IT (Third Amdt.) Rules, 1981, w.e.f. 1-4-1981, read as under :

"(*c*) an amount equal to—

(*i*) where such accommodation is situate in any one of the following places, namely :— Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Calcutta, Coimbatore, Delhi, Faridabad, Gwalior (Lashkar), Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lucknow, Ludhiana City, Madural, Nagpur, Patna, Poona, Srinagar, Surat, Vadodara (Baroda) or Varanasi (Benaras) or the urban agglomeration of each of such places;

(*ii*) where such accommodation is situate at Bombay, Calicut, Cochin, Ghaziabad, Hubli-Dharwar, Madras, Sholapur, Trivandrum or Vishakhapatnam;

one-fifth of the amount of salary due to the assessee in respect of the relevant period; and

(*iii*) where such residential accommodation is situate at any other place, one-tenth of the amount of salary due to the assessee in respect of the relevant period; or"

Prior to 1-4-1981, clause (*c*)(*i*) was amended by the IT (Second Amdt.) Rules, 1966, w.e.f. 1-4-1966 and later substituted by the IT (Third Amdt.) Rules, 1975, w.e.f. 1-4-1975, respectively.

4. Omitted by the IT (Fourth Amdt.) Rules, 1986, w.e.f. 1-4-1987.

5. Omitted, *ibid.* Earlier clause (*iii*) was inserted by the IT (Third Amdt.) Rules, 1981, w.e.f. 20-2-1981.

6. Substituted by the IT (First Amdt.) Rules, 1989, w.e.f. 1-4-1989. Earlier, it was inserted by the IT (Third Amdt.) Rules, 1975, w.e.f. 1-4-1975.

(Contd. on p. 1.4)

(*b*) to any place in India after retirement from service or after the termination of his service,

shall be the amount actually incurred on the performance of such travel subject to the following conditions, namely :—

[7][(*i*) where the journey is performed on or after the 1st day of October, 1997, by air, an amount not exceeding the air economy fare of the national carrier by the shortest route to the place of destination;

(*ii*) where places of origin of journey and destination are connected by rail and the journey is performed on or after the 1st day of October, 1997, by any mode of transport other than by air, an amount not exceeding the

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(*Contd. from p. 1.3*)

Provisions of rule 2B(*a*) making difference between air travel charges and railway first class AC charges exigible to tax under the Act are not *ultra vires* provision of section 10(*5*) - *K.P. Harihara Kumar* v. *Union of India* [2004] 270 ITR 194/[2005] 142 Taxman 64 (Ker.). Quantum of exemption allowable on the second or subsequent block of 4 years need not be restricted to quantum of exemption allowed for the first block - *Fifth ITO* v. *S.K.Deenadayalu* [1986] 17 ITD 61 (Bang. - Trib.). Expenditure on items other than travel is not covered - *Uday C. Nanavati* v. *ITO* [1983] 4 ITD 591 (Bom. - Trib.). Exemption is restricted to expenditure actually incurred on travel. Fixed sums paid as leave travel assistance on the basis of self-declarations made by employees will not be exempt, since such self-declarations are not amenable to verification for purposes of ascertaining the actual expenditure incurred - *Dr. Reddy Laboratories Ltd.* v. *ITO* [1996] 58 ITD 104 (Hyd. - Trib.). Employer is under no statutory obligation to collect evidence to show that employee has actually utilised the amounts paid towards leave travel concession/assistance - *CIT* v. *ITI Ltd.* [2009] 183 Taxman 219 (SC)/*CIT* v. *Larsen & Toubro Ltd.* [2009] 181 Taxman 71 (SC). Leave travel concession is exempt under section 10(*5*), read with rule 2B, only if assessee-employee undertakes journey to any place in India. Further, section 10(*5*), read with rule 2B, no way provides that assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of journey within India. - *Om Prakash Gupta* v. *ITO* [2013] 33 taxmann.com 169/58 SOT 304 (Chd. - Trib.). LTC paid by assessee to employees involving foreign travel as well would not qualify for exemption under section 10(*5*). As per provisions of section 10(*5*), only that reimbursement of travel concession or assistance to an employee is exempted which is incurred for travel to any place in India. - *State Bank of India* v. *Dy. CIT (TDS)* [2016] 67 taxmann.com 81/158 ITD 194 (Luck. - Trib.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

7. Substituted by the IT (First Amdt.) Rules, 1998, w.r.e.f. 1-10-1997, as amended by Notification No. SO 201(E), dated 12-3-1998. Prior to their substitution, clauses (*i*), (*ii*) and (*iii*), as amended by the IT (Fifth Amdt.) Rules, 1990, w.r.e.f. 1-4-1989, read as under :

"(*i*) where the journey is performed on or after the 1st day of April, 1989 by rail, an amount not exceeding the air-conditioned second class fare by the shortest route to the place of destination;

(*ii*) where places of origin of journey and destination are connected by rail and the journey is performed on or after the 1st day of April, 1989 by any other mode of transport, an amount not exceeding the air-conditioned second class rail fare by the shortest route to the place of destination; and

(*iii*) where the places of origin of journey and destination or part thereof are not connected by rail and the journey is performed on or after the 1st day of April, 1989 between such places, the amount eligible for exemption shall be,—

(*A*) where a recognised public transport system exists, an amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination; and

(*B*) where no recognised public transport system exists, an amount equivalent to the air-conditioned second class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail."

air-conditioned first class rail fare by the shortest route to the place of destination; and

(*iii*) where the places of origin of journey and destination or part thereof are not connected by rail and the journey is performed on or after the 1st day of October, 1997, between such places, the amount eligible for exemption shall be :—

(*A*) where a recognised public transport system exists, an amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination; and

(*B*) where no recognised public transport system exists, an amount equivalent to the air-conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail.]

(2) The exemption referred to in sub-rule (1) shall be available to an individual in respect of two journeys performed in a block of four calendar years commencing from the calendar year 1986 :

[8][**Provided** that nothing contained in this sub-rule shall apply to the benefit already availed of by the assessee in respect of any number of journeys performed before the 1st day of April, 1989 except to the extent that the journey or journeys so performed shall be taken into account for computing the limit of two journeys specified in this sub-rule.]

(3) Where such travel concession or assistance is not availed of by the individual during any such block of four calendar years, an amount in respect of the value of the travel concession or assistance, if any, first availed of by the individual during first calendar year of the immediately succeeding block of four calendar years shall be eligible for exemption.

Explanation : The amount in respect of the value of the travel concession or assistance referred to in this sub-rule shall not be taken into account in determining the eligibility of the amount in respect of the value of the travel concession or assistance in relation to the number of journeys under sub-rule (2).]

[9][(4) The exemption referred to in sub-rule (1) shall not be available to more than two surviving children of an individual after 1st October, 1998 :

Provided that this sub-rule shall not apply in respect of children born before 1st October, 1998, and also in case of multiple births after one child.]

[10]**[Guidelines for the purposes of section 10(10C).**[11]

2BA. The amount [12]received by an employee of—

(*i*) a public sector company; or

8. Inserted by the IT (Fifth Amdt.) Rules, 1990, w.r.e.f. 1-4-1989.

9. Inserted by the IT (First Amdt.) Rules, 1998, w.r.e.f. 1-10-1997.

10. Substituted by the IT (Twentieth Amdt.) Rules, 1993, w.r.e.f. 18-8-1992. Prior to its substitution, rule 2BA, as inserted by the IT (Sixteenth Amdt.) Rules, 1992, w.e.f. 18-8-1992 and amended by the IT (Third Amdt.) Rules, 1993, w.e.f. 26-2-1993, read as under :

'2BA. *Guidelines for the purposes of section 10*(10C).—The amount received by an employee of a public sector company or of any other company at the time of his voluntary retirement

(Contd. on p. 1.6)

(*ii*) any other company; or

(*iii*) an authority established under a Central, State or Provincial Act; or

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(*Contd. from p. 1.5*)

shall be exempt under clause (*10C*) of section 10 only if the scheme of voluntary retirement framed by the aforesaid company is in accordance with the following requirements, namely :—

(*i*) it applies to an employee of the company who has completed 10 years of service or completed 40 years of age;

(*ii*) it applies to all employees (by whatever name called) including workers and executives of the company excepting Directors of the company;

(*iii*) the scheme of voluntary retirement has been drawn up to result in overall reduction in the existing strength of the employees of the company;

(*iv*) the vacancy caused by voluntary retirement is not to be filled up, nor the retiring employee is to be employed in another company or concern belonging to the same management;

(*v*) the amount receivable on account of voluntary retirement of the employee, does not exceed the amount equivalent to one and one-half months' salary for each completed year of service or salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation. In any case, the amount should not exceed rupees five lakhs in case of each employee;

(*vi*) the employee has not availed in the past, the benefit of any other voluntary retirement scheme.

Explanation : In this rule, the expression "salary" shall have the same meaning as is assigned to it in clause (*h*) of rule 2 of Part A of the Fourth Schedule.'

11. Section 10(*10C*) is constitutionally valid - *Shashikant Laxman Kale* v. *Union of India* [1990] 52 Taxman 352 (SC)/*All India Blue Star Employees Federation* v. *Union of India* [1998] 234 ITR 155/101 Taxman 580 (Bom.). For clarification regarding guidelines for approval of scheme, refer to Circular No. 640, dated 26-11-1992. Benefit payable under VRS is benefit in lieu of salary and is chargeable/exempt on cessation of service, even though payment is spread over a number of years and would not be hit by second proviso to section 10(*10C*) - *SAIL DSP VR Employees Association 1998* v. *Union of India* [2003] 128 Taxman 704/262 ITR 638 (Cal.)/*ITO* v. *Dhan Sai Srivas* [2009] 183 Taxman 302 (Chhattisgarh). Terminal benefits cannot be brought within scope of 'amount received' under section 10(*10C*) - *SAIL DSP VR Employees Association 1998* v. *Union of India* [2003] 128 Taxman 704/262 ITR 638 (Cal.). Different companies can frame different schemes of voluntary retirement for different classes of employees, provided that such scheme conforms to the guidelines prescribed in rule 3BA - *Arunkumar T. Makwana* v. *ITO* [2006] 156 Taxman 429 (Guj.). Amount received by employees of RBI opting for Optional Early Retirement Scheme would qualify for deduction - *Chandra Ranganathan* v. *CIT* [2010] 195 Taxman 418 (SC). Relief under section 89(1) is admissible upto and inclusive of assessment year 2009-10 on the taxable portion of the amount received on voluntary retirement - *CIT* v. *M. Raman* [2000] 245 ITR 856/[2002] 120 Taxman 328 (Mad.)/*CIT* v. *G.V. Venugopal* [2005] 144 Taxman 784 (Mad.)/*CIT* v. *P. Surendra Babu* [2005] 279 ITR 402/149 Taxman 82 (Ker.)/*CIT* v. *S. Sundar* [2006] 284 ITR 687 (Mad.)/*CIT* v. *Geetha Mohan* [2006] 201 CTR (Mad.) 551/*CIT* v. *J. Ramamani* [2006] 286 ITR 616 (Mad.)/*State Bank of Travancore* v. *CBDT* [2006] 151 Taxman 133 (Ker.)/*CIT* v. *Nagesh Devidas Kulkarni* [2007] 291 ITR 407 (Bom.)/*CIT* v. *S. Srinivasan* [2007] 160 Taxman 314 (Mad.)/*CIT* v. *M. Krishnamurthy* [2009] 318 ITR 167 (Mad.)/*CIT* v. *M. Abdul Kareem* [2009] 311 ITR 162 (Mad.). Rule 2BA which is relevant for VRS, is not applicable in case of computing deduction in hands of employer under section 35DDA - *CIT* v. *State Bank of Mysore* [2013] 36 taxmann.com 552/217 Taxman 357 (Kar.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

12. The word "received" should read as "received or receivable" to bring it in line with amendment made to section 10(*10C*) by the Finance Act, 2003, w.e.f. assessment year 2004-05.

(*iv*) a local [13][authority; or]

[14][(*v*) a co-operative society; or

(*vi*) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(*vii*) an Indian Institute of Technology within the meaning of clause (*g*)[15] of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

[16][(*viia*) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette[17], specify in this behalf; or]

(*viii*) such institute of management as the Central Government may, by notification in the Official Gazette[18], specify in this behalf,]

[19]at the time of his voluntary retirement [20][or voluntary separation] shall be exempt under clause (*10C*) of section 10 only if the scheme of voluntary retirement framed by the aforesaid company or authority [21][or co-operative society or University or institute], as the case may be [22][or if the scheme of voluntary separation framed by a public sector company,] is in accordance with the following requirements, namely :—

(*i*) it applies to an employee [23][***] who has completed 10 years of service or completed 40 years of age;

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13. Substituted for "authority," by the IT (Fifth Amdt.) Rules, 1994, w.r.e.f. 1-4-1994.
14. Inserted, *ibid.*
15. For definition of "Institute" under section 3(g) of the Institute of Technology Act, 1961, *see* **Appendix.**
16. Inserted by the IT (Tenth Amdt.) Rules, 2002, w.r.e.f. 1-4-2002. [Amendment in section 10(*10C*) was with effect from 1-4-2002.]
17. (*i*) International Crop Research Institute for Semi Arid Tropics - SO 645(E), dated 19-6-2002, (*ii*) Action for Food Production (AFPRO), New Delhi - Notification No. SO 996, dated 26-3-2004, and (*iii*) Govt. Tool Room & Training Centre, Rajajinagar Industrial Area, Bangalore - Notification No. 159/2004 [F. No. 200/7/2003-IT(A-I)], dated 22-6-2004.
18. (*i*) Indian Institutes of Management at Ahmedabad, Bangalore, Calcutta & Lucknow - SO 475(E), dated 28-6-1994, and (*ii*) Indian Institute of Foreign Trade, New Delhi - SO 114(E), dated 16-2-1999. For details, *see* Taxmann's Master Guide to Income-tax Rules.
19. The expression 'at the time of' should read as 'on' to bring it in line with amendment made to section 10(*10C*) by the Finance Act, 2003, w.e.f. assessment year 2004-05.
20. Inserted by the IT (Twenty-third Amdt.) Rules, 2000, w.e.f. 24-11-2000.
21. Inserted by the IT (Fifth Amdt.) Rules, 1994, w.r.e.f. 1-4-1994.
22. Inserted by the IT (Twenty-third Amdt.) Rules, 2000, w.e.f. 24-11-2000.
23. Words "of the company or the authority, as the case may be," omitted by the IT (Fifth Amdt.) Rules, 1994, w.r.e.f. 1-4-1994.

[24][(*ii*) it applies to all employees (by whatever name called) including workers and executives of a company or of an authority or of a co-operative society, as the case may be, excepting directors of a company or of a co-operative society;]

(*iii*) the scheme of voluntary retirement [25][or voluntary separation] has been drawn to result in overall reduction in the existing strength of the employees [26][***];

(*iv*) the vacancy caused by the voluntary retirement [27][or voluntary separation] is not to be filled up;

(*v*) the retiring employee of a company shall not be employed in another company or concern belonging to the same management;

(*vi*) the amount receivable on account of voluntary retirement [27][or voluntary separation] of the employee does not exceed the amount equivalent to [28][three months'] salary for each completed year of service or salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation[29] :

[30][**Provided** that requirement of (*i*) above would not be applicable in case of amount received by an employee of a public sector company under the scheme of voluntary separation framed by such public sector company.]

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24. Substituted by the IT (Fifth Amdt.) Rules, 1994, w.r.e.f. 1-4-1994. Prior to its substitution, it read as under :
"(*ii*) it applies to all employees (by whatever name called) including workers and executives of the company or the authority, as the case may be, excepting Directors of the company;"
25. Inserted by the IT (Twenty-third Amdt.) Rules, 2000, w.e.f. 24-11-2000.
26. Words "of the company or the authority, as the case may be" omitted by the IT (Fifth Amdt.) Rules, 1994, w.r.e.f. 1-4-1994.
27. Inserted by the IT (Twenty-third Amdt.) Rules, 2000, w.e.f. 24-11-2000.
28. Substituted for "one and one-half months" by the IT (Tenth Amdt.) Rules, 1994, w.e.f. 1-11-1994.
29. Exemption that is available under section 10(*10C*) has to be allowed while estimating annual income of person receiving salary, but not in respect of any single payment that may be made by employer - *Y.S.C. Babu* v. *Chairman & Managing Director, Syndicate Bank* [2002] 120 Taxman 88/253 ITR 1 (AP). Emphasis in rule 2BA is on amount receivable on account of voluntary scheme which should not exceed limits prescribed therein; it is not intention of Legislature that every VRS framed by companies must provide that an employee availing benefit of VRS would be paid an amount either equivalent to (*1*) three months' salary for each completed year of service, or (*2*) salary at time of retirement multiplied by balance months of service left before date of his retirement on superannuation. Rule 2BA does not provide at all that amount representing lower of two limits specified in clause (*vi*) of rule 2BA should be allowed under VRS - *Arunkumar T. Makwana* v. *ITO* [2006] 156 Taxman 429 (Guj.). For details, *see* Taxmann's Master Guide to Income-tax Rules.
30. Inserted by the IT (Twenty-third Amdt.) Rules, 2000, w.e.f. 24-11-2000.

Explanation.—In this rule, the expression "salary" shall have the same meaning as is assigned to it in clause (*h*) of rule 2 of Part A of the Fourth Schedule.]

[31][**Prescribed allowances for the purposes of clause (*14*) of section 10.**

2BB. (1) For the purposes of sub-clause (*i*) of clause (*14*) of section 10, prescribed allowances, by whatever name called, shall be the following, namely :—

(*a*) any allowance granted to meet the cost of travel on tour or on transfer;

(*b*) any allowance, whether, granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty;

(*c*) any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit :

Provided that free conveyance is not provided by the employer;

(*d*) any allowance granted to meet the expenditure incurred on a helper where such helper is engaged for the performance of the duties of an office or employment of profit;

(*e*) any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions;

(*f*) any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform[32] for wear during the performance of the duties of an office or employment of profit.

Explanation.—For the purpose of clause (*a*), "allowance granted to meet the cost of travel on transfer" includes any sum paid in connection with transfer, packing and transportation of personal effects on such transfer.

(2) For the purposes of sub-clause (*ii*) of clause (*14*) of section 10, the prescribed allowances, by whatever name called, and the extent thereof shall be the following, namely :—

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31. Inserted by the IT (Eighth Amdt.) Rules, 1995, w.e.f. 1-7-1995. Additional conveyance allowance and incentive bonus paid to LIC Officers are not covered - *CIT* v. *E.A. Rajendran* [1999] 235 ITR 514/104 Taxman 587 (Mad.)/*LIC Class I Officers (Bombay) Association* v. *LIC of India* [1998] 229 ITR 510 (Bom.)/*CIT* v. *M.D. Patil* [1998] 229 ITR 71/100 Taxman 516 (Kar.) (FB). For details, *see* Taxmann's Master Guide to Income-tax Rules.

32. Dress code worn by employees is not uniform for purpose of exemption as uniform allowance under section 10(*14*)(*i*). Term 'uniform' in context of dressing carries a vast different connotation and would necessarily include precise instructions as to dress, design, and also colours which will achieve a uniformity in dressing at a work place or at place of study or some such collection of group of persons belonging to by and large a common class and is entirely different from a far more broader concept of a general dress code. - *Oil & Natural Gas Corpn. Ltd.* v. *Asstt. CIT* [2016] 73 taxmann.com 273/243 Taxman 105 (Guj.).

TABLE

Sl. No.	** Name of allowance*	*Place at which allowance is exempt*	*Extent to which allowance is exempt*
(1)	*(2)*	*(3)*	*(4)*
1.	Any Special Compensatory Allowance in the nature of [33][Special Compensatory (Hilly Areas) Allowance] or High Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance	**I.** (*a*) Manipur Mollan/RH-2365. (*b*) Arunachal Pradesh (*i*) Kameng; (*ii*) North Eastern Arunachal Pradesh where heights are 9,000 ft. and above; (*iii*) Areas east or west of Siang and Subansiri sectors (*c*) Sikkim (*i*) Area North-NE-East of line Chhaten LR 0105, Launchung LR 1902, pt. 4326 LW 1790, pt. 4349 LW 1479, pt. 3601 LW 1471 to mile 13 LW 1367 to Berluk LW 2253. (*ii*) All other areas at 9,000 ft. and above. (*d*) Uttar Pradesh Areas of Harsil, Mana and Malari Sub-divisions and other areas of heights at 9,000 ft. and above. (*e*) Himachal Pradesh (*i*) All areas at 9,000 ft. and above ahead of line joining Puhka-jakunzomla towards the bower. (*ii*) Area ahead of line joining Karchham and Shigrila towards the bower. (*iii*) All areas in Kalpa, Spiti, Lahaul and Tisa. (*f*) Jammu and Kashmir (*i*) All areas from NR 396950 to NR 350850, NR 370790, NR 311776 North of	[34][Rs. 800] per month

33. Substituted for "Composite Hill Compensatory Allowance" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
34. Substituted for "Rs. 600", *ibid.*

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		Shaikhra Village, North of Pindi Village to NR 240800. (*ii*) Areas of Doda, Sank and other posts located in areas at a height of 9,000 ft. and above. (*iii*) North of line Kud-Dudu and Bastt-garh, Bilwar, Batote and Patnitop. (*iv*) All areas ahead of Zojila served by Road Srinagar-Zojila-Leh in Leh District. (*v*) Gulmarg - All areas forward of line joining Anita Linyan 3309 - Kaunrali - 2407. (*vi*) Uri South - All areas forward of Kaunrali - Kandi 1810 Kustam 1505 - Sebasantra 1006 Changez 0507 - Jak 19904 Keekar 9704 Jamun 9607 Neeta 9508. (*vii*) BAAZ Kaiyan Bowl - All areas forward of Dulurja 9712-BAAZ 0317 - Shamsher 0416 including New Shamsher 0615 - Zorawar 1017 - Malaugan Base 1027 - Radha 0836 to Nastachun Pass 9847. (*viii*) Tangdhar - All areas west of Nastachun Pass Tangdhar Bowl and on Shamshabari Range and forward of it. (*ix*) Karan and Machhal sub-sectors - All areas along the line Pharkiangali 0869 to Z Gali 4376 and forward of Shamshabari Range. (*x*) Panzgam, Trehgam and Drugmul.	

Sl. No.	*Name of allowance*	*Place at which allowance is exempt*	*Extent to which allowance is exempt*
(1)	*(2)*	*(3)*	*(4)*
		II. Siachen area of Jammu and Kashmir	[35][Rs. 7,000] per month
		III. All places located at a height of 1,000 metres or more above the sea level, other than places specified at (I) and (II) above.	[36][Rs. 300] per month
[37][2.	Any Special Compensatory Allowance in the nature of Border Area Allowance, Remote Locality Allowance or Difficult Area Allowance or Disturbed Area Allowance	I. (*a*) Little Andaman, Nicobar and Narcondum Islands;	Rs. 1,300 per month
		(*b*) North and Middle Andamans;	
		(*c*) Throughout Lakshadweep and Minicoy Islands;	
		(*d*) All places on or north of the following demarcation line: Point 14600 (2881) to Sala MS 2686-Matau MS 6777 - Sakong MT 1379-Bamong-Khonawa MO 2803 - Nyapin MO 7525 - River Khru to its junction with the river Kamla MP - 2226 - Taliha - Yapuik MK 7410 - Gshong MK 9749 - Yinki Yong NF 4324-Damoroh MF 6208 - Ahinkolin NF 8811 - Kronli MG 2407 - Hanli NM 4096 - Gurongon NM 4592-Loon NM 7579 - Mayuliang NM 0169-Chawah NM 9943 - Kamphu NM 1125 - Point 6490 (NM 1493) Vijayanagar NSA 486;	
		(*e*) Following areas in Himachal Pradesh :	
		(*i*) Pangi Tehsil of Chamba District;	

35. Substituted for "Rs. 1,200" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
36. Substituted for "Rs. 150", *ibid.*
37. Substituted, *ibid.*

Sl. No	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		(ii) Following Panchayats and villages of Bharmour Tehsil of Chamba District : (A) Panchayat : Badgaun, Bajol, Deol Kugti Nayagam and Tundah. (B) Villages : Ghatu of Gram Panchayat Jagat Kanarsi of Gram Panchayat, Cauhata. (iii) Lahaul and Spiti District; (iv) Kinnaur district: (A) Asrang, Chitkul and Hango Kuno Charang Panchayats; (B) 15/20 Area comprising the Gram Panchayats of Chhota Khamba, Nathpa and Rupi; (C) Pooh Sub-Division excluding the Panchayat Areas specified above. (v) 15/20 Area of Rampur Tehsil comprising of Panchayats of Koot, Labana-Sadana, Sarpara and Chandi Branda of Shimla District. (vi) 15/20 Area of Nirmand Tehsil, com-	

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		prising the Gram Panchayats of Kharga, Kushwar and Sarga of Kullu District. (*f*) Chimptuipui District of Mizoram and areas beyond 25 km. from Lunglei town in Lunglei District of Mizoram. (*g*) Following areas in Jammu and Kashmir: (*i*) Niabat Bani, Lohi, Malhar and Macchodi of Kathua District; (*ii*) Dudu Basantgarh Lander Bhamag Illaqa, Thakrakote and Nagote of Udhampur District; (*iii*) All areas in Tehsil Mahore except those specified at III(*f*)(*i*) below in Udhampur District; (*iv*) Illaqas of Padder and Niabat Nowgaon in Kishtwar Tehsil of Doda District; (*v*) Leh District; (*vi*) Entire Gurez-Niabat, Tangdhar Sub-Division and Keran Illaqa of Baramulla District. (*h*) Following areas of Uttar Pradesh :— (*i*) Chamoli District; (*ii*) Pithoragarh District; (*iii*) Uttarkashi District. (*i*) Throughout Sikkim State.	
		II. Installations in the Continental Shelf of India and the Exclusive Economic Zone of India.	Rs. 1,100 per month

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		III. (*a*) Throughout Arunachal Pradesh other than areas covered by those specified at I(*d*) above. (*b*) Throughout Nagaland State. (*c*) South Andaman (including Port Blair). (*d*) Throughout Lunglei District (excluding areas beyond 25 km. from Lunglei town) of Mizoram. (*e*) Dharmanagar, Kailasahar, Amarpur and Khowai in Tripura. (*f*) Following areas in Jammu and Kashmir : (*i*) Areas up to Goel from Kamban side and areas upto Arnas from Keasi side in Tehsil Mahore of Udhampur District; (*ii*) Matchill in Baramulla District. (*g*) Following areas in Himachal Pradesh : (*i*) Bharmour Tehsil, excluding Panchayats and villages covered by those specified at I(*e*)(*ii*) above of Chamba District; (*ii*) Chhota Bhangal and Bara Bhangal area of Kangra District; (*iii*) Kinnaur District other than areas specified at I(*e*)(*iv*); (*iv*) Dodra-Kawar Tehsil, Gram Panchayats of Darkali in Rampur, Kashapath Tehsil and Munish, Ghori Chaibis of Pargana Sarahan of Shimla District.	Rs. 1,050 per month

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		IV. (*a*) Throughout Aizawal District of Mizoram; (*b*) Throughout Tripura except areas those specified at III(*e*); (*c*) Throughout Manipur; (*d*) Following areas of Himachal Pradesh : (*i*) Jhandru Panchayat in Bhatiyat Tehsil, Churah Tehsil, Dalhousie Town (including Banikhet proper) of Chamba District; (*ii*) Cuter Seraj (excluding Village of Jakat-Khana and Burow in Nirmand Tehsil of Kullu District); (*iii*) Following areas of Mandi District : (*A*) Chhuhar Valley (Joginder-nagar Tehsil); (*B*) Bagra, Chhatri, Chhotdhar, Garagushain, Gatoo, Gharyas, Janjehli, Jaryar, Johar Kalhani Kalwan, Kholanal, Loth, Silibagi, Somachan, Thachdhar, Tachi and Thana Panchayats of Thunag Tehsil; (*C*) Binga, Kamlah, Saklana, Tanyar and Tarakholah, Panchayats of Dharampur Block;	Rs. 750 per month

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		(D) Balidhar, Bagra, Gopalpur, Khajol, Mahog, Mehudi, Manj, Pekhi, Sainj, Sarahan and Teban, Panchayats of Karsog Tehsil; (E) Bohi, Batwara, Dhanyara, Paura-Kothi, Seri and Shoja, Panchayats of Sundernagar Tehsil. (iv) Following areas and offices of Kangra District : (A) Dharamshala town and Women's ITI; Dari, Mechanical Workshop, Ramnagar; Child Welfare and Town Country Planning Offices, Sakoh; CRSF Office at lower Sakoh; Kangra Milk Supply Scheme, Shamnagar; Tea Factory, Dari; Forest Corporation Office, Shamnagar; Tea Factory, Dari; Settlement Office, Shamnagar and Binwa Project, Shamnagar. Offices located outside the Municipal limit of	

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		Dharamshala town but included in Dharamshala town for purposes of eligibility to special Compensatory (Remote Locality) Allowance; (B) Palampur town, including HPKVV Campus at Palampur and H.P. Krishi Vishvavidyalaya Campus; Cattle Development Office/ Jersy Farm, Banuri; Sericulture Office/Indo-German Agriculture Workshop/HPPWD Division, Bundla; Electrical Sub-Division, Lohna; D.P.O. Corporation, Bundla and Electrical HPSEE Division, Ghuggar offices located outside the Municipal limits of Palampur town but included in Palampur town for the purpose of above allowance;	

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		(v) Chopal Tehsil; Ghoris, Panjgaon, Patsnu, Naubis and Teen Koti of Pargana Sarahan; Deothi Gram Panchayat of Taklesh Area; Pargana Barabis; Kasba Rampur and Ghori Nog of Pargana Rampur of Rampur Tehsil of Shimla District and Shimla Town and its suburbs (Dhalli, Jatog, Kasumpti, Mashobra, Taradevi and Tutu); (vi) Panchayats of Bani, Bakhali (Pachhad Tehsil), Bharog Bheneri (Paonata Tehsil), Birla (Nahan Tehsil), Dibber (Pachhad Tehsil) of Thanan Kasoga (Nahan Tehsil) in Sirmour District and Transgiri Tract of Sirmour District; (vii) Mangal Panchayat of Solan District; (e) Following areas in Jammu and Kashmir : (i) Areas in Poonch and Rajouri Districts excluding the towns of Poonch and Rajouri and Sunderbani and other Urban areas in the two districts; (f) Following areas in Jammu and Kashmir : Areas not included in I(g), III(f) and IV(e) above, but which are within a distance of 8 km. from the line of actual control or at places which may be declared as qualifying for Border Allow-	

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		ance from time to time by the State Government for their own staff.	
		V. Jog Falls in Shimoga District in Karnataka.	Rs. 300 per month.
		VI. (*a*) Throughout the State of Himachal Pradesh other than areas covered by those specified in I(*e*), III(*g*) and IV(*d*)	Rs. 200 per month.]
		(*b*) Throughout the State of Assam and Meghalaya	
3.	[38][Special Compensatory (Tribal Areas/Schedule Areas/Agency Areas) Allowance]	(*a*) Madhya Pradesh (*b*) Tamil Nadu (*c*) Uttar Pradesh (*d*) Karnataka (*e*) Tripura (*f*) Assam (*g*) West Bengal (*h*) Bihar (*i*) Orissa	[39][Rs. 200] per month.
4.	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place, provided that such employee is not in receipt of daily allowance	Whole of India	70 per cent of such allowance up to a maximum of [40][Rs. 10,000] per month.
5.	Children Education Allowance	Whole of India	[41][Rs. 100] per month per child up to a maximum of two children.
6.	Any allowance granted to an employee to meet the	Whole of India	[42][Rs. 300] per month per

38. Substituted for "Tribal Area Allowance" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
39. Substituted for "Rs. 100", *ibid.*
40. Substituted for "Rs. 6,000" by the IT (Eighth Amdt.) Rules, 2010, w.r.e.f. 1-9-2008. Earlier "Rs. 6,000" was substituted for "Rs. 3,000" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
41. Substituted for "Rs. 50" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
42. Substituted for "Rs. 150", *ibid.*

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
	hostel expenditure on his child		child up to a maximum of two children.
7.	Compensatory Field Area Allowance	(a) Following areas in Arunachal Pradesh :— (i) Tirap and Changlang Districts; (ii) All areas North of line joining point 4448 in LZ 4179-Nukme Dong MS 3272-Sepla MT 2969-Palin MO 9213-Daporijo NR 5841-Along NL 1273-Hunli NM 3196-Tidding Tuwi MT 6369-Hayuliang NN 0170-Tawaken MT 8136-Champai Bun NM 8814, all inclusive. (b) Throughout Manipur and Nagaland. (c) Following areas in Sikkim :— All areas North and North East of line joining Phalut LV 4750-Gezing LV 7059-Mangkha LV 6160-Penlang La LW 0666-Rangli LW 1448-BP 1 in LW 2453 on Indo-Bhutan Border, all inclusive. (d) Following areas in Himachal Pradesh : All areas East of line joining Umasila NV 3951-Udaipur NY 8663-Manikaran SB 2300-Pir Parbati Pass TA 1459-Taranda TA 2335-Barasua Pass TA 8801, all inclusive. (e) Following areas in Uttar Pradesh :— All areas North and North-East of line joining Barasua Pass Gangnani TG 1362-Govind Ghat TG 0937-Tapovan TH 1822-Musiari TN 8982-Relagad TO 2466, all inclusive. (f) Following areas in Jammu and Kashmir :— (i) Areas North and East of line joining Zojila MU	[43][Rs. 2,600] per month.

43. Substituted for "Rs. 1,300" by the IT (Twenty-second Amdt.) Rules, 2000, w.r.e.f. 1-5-1999. Earlier "Rs. 1,300" was substituted for "Rs. 975" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		3036-Baralachala NE 6672 along the Great Himalayan Range, all inclusive; (*ii*) All areas West of line joining point 1556 in NR 5470-Gulmarg MT 3105-Naushara MY 3105-Ringapat MT 2133-Handwara MT 2043-Laingyal MT 2339-Point 8405 in NG 4565-North of line joining point 8403-Bunakut MT 5453-Razan NN 2239-Zojila, all inclusive; (*iii*) All areas West of line joining tip of Chicken Neck RD 7073-Canal junction RD 6364-Mawa Brahmana RD 6183-Chauki RD 6393-Road junction RD 6499-Baramgala MY 3854-Point 1556 in NR 5470, all inclusive.	
8.	Compensatory Modified Field Area Allowance	(*a*) Following areas in Punjab and Rajasthan :— Areas West of line joining Jessai, Barmer, Jaisalmer, Pokharan, Udasar, Mahajan Ranges, Suratgarh, Lalgarh, Jattan, Abohar, Govindgarh, Fazilka, Jandiala Guru, Moga, Dholewal, Deas, Bir Sarangwal, Hussainiwala, Dera Baba Nanak, Laisain pulge upto the international border, all inclusive. (*b*) Following area in Haryana :— Satrod (Hissar). (*c*) Following areas in Himachal Pradesh :— Areas North of line joining Narkhanda, Keylong upto Field Area line/High Altitude line.	[44][Rs. 1,000] per month

44. Substituted for "Rs. 500" by the IT (Twenty-second Amdt.) Rules, 2000, w.r.e.f. 1-5-1999. Earlier "Rs. 500" was substituted for "Rs. 375" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
		(d) Following areas in Arunachal Pradesh and Assam :— (i) Cachar and North Cachar Districts of Assam including Silchar; (ii) All areas of Arunachal Pradesh and Assam North of river Brahmaputra except Tejpur - Misamari and Field Areas. (e) Throughout Mizoram and Tripura. (f) Following areas in Sikkim and West Bengal :— Areas Northwards of line joining Sevoke LV 9112-Burdong LV 985-Sherwani LV 9453 - Bagrakot LW 0113-Damdim LW 1109-New Mal-Hasimara-QB 7894 Ganga Ram Tea Estate QA 1377 upto the High Altitude line/field area line/international border, all inclusive. (g) Following areas in Uttar Pradesh :— Areas North of line joining Uttarkashi, Karan Prayag, Gauchar, Joshimath, Chamoli, Rudra Prayag, Askote, Charamgad, Dharchula, Kausani and Narendra Nagar upto international border, all inclusive. (h) Following areas in Jammu and Kashmir :— (i) Areas West of line joining Pattan, Baramulla, Kupwara, Drugmula, Panges, Mankes, Buniyar, Pantha Chowk, Khanabal, Anantnag, Khundru and Khru upto the existing High altitude line, all inclusive; (ii) Areas West of line joining - BP-19, Brahmanadi-Bari, Jindra, Dhansal, Katra, Sanjhi Chatt, Batote, Patnitop, Ramban and Banihal upto the existing High altitude line, all inclusive.	

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
9.	Any special allowance in the nature of counter-insurgency allowance granted to the members of armed forces operating in areas away from their permanent locations [45][***]	Whole of India	[46][Rs. 3,900] per month.
10.	[47][***]		
[48][11.	Transport allowance granted to an employee, who is blind [49][or deaf and dumb] or orthopaedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty	Whole of India	[50][Rs. 3,200 per month]]
[51][12.	Underground allowance granted to an employee who is working in uncongenial, unnatural climate in underground [52][***] mines	Whole of India	Rs. 800 per month.]
[53][13.	Any special allowance in the nature of high altitude (uncongenial climate) allow-	(a) For altitude of 9,000 to 15,000 feet	Rs. 1,060 per month.

45. Words "for a period of more than 30 days" omitted by the IT (Twenty-second Amdt.) Rules, 2005, w.e.f. 1-4-2006.
46. Substituted for "Rs. 1,300" by the IT (Twenty-second Amdt.) Rules, 2000, w.r.e.f. 1-5-1999. Earlier "Rs. 1,300" was substituted for "Rs. 975" by the IT (Third Amdt.) Rules, 2000, w.r.e.f. 1-8-1997.
47. Omitted by the IT (Third Amdt.) Rules, 2018, w.e.f. 1-4-2019 and shall apply to the assessment year 2019-2020 and subsequent assessment years. Prior to its omission, columns (2) to (4), as inserted by the IT (Seventh Amdt.) Rules, 1998, w.r.e.f. 1-8-1997 and amended by the IT (Twenty-ninth Amdt.) Rules, 1999, w.r.e.f. 1-8-1997 and IT (Sixth Amdt.) Rules, 2015, w.r.e.f. 1-4-2015, read as under :

"(2)	(3)	(4)
Transport allowance granted to an employee other than an employee referred to in serial number 11 to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty	Whole of India	Rs. 1,600 per month"

48. Inserted by the IT (Twenty-ninth Amdt.) Rules, 1999, w.r.e.f. 1-8-1997.
49. Inserted by the IT (Thirteenth Amdt.) Rules, 2015, w.e.f. 23-9-2015.
50. Substituted for "Rs. 1,600 per month" by the IT (Sixth Amdt.) Rules, 2015, w.r.e.f. 1-4-2015.
51. Inserted by the IT (Fourth Amdt.) Rules, 2000, w.e.f. 24-4-2000.
52. Word "coal" omitted by the IT (Thirteenth Amdt.) Rules, 2007, w.e.f. 7-11-2007.
53. Inserted by the IT (Twenty-second Amdt.) Rules, 2000, w.r.e.f. 1-5-1999.

Sl. No.	Name of allowance	Place at which allowance is exempt	Extent to which allowance is exempt
(1)	(2)	(3)	(4)
	ance granted to the member of the armed forces operating in high altitude areas	(*b*) For altitude above 15,000 feet	Rs. 1,600 per month.
14.	Any special allowance granted to the members of the armed forces in the nature of special compensatory highly active field area allowance	Whole of India	Rs. 4,200 per month.]
[54][15.	Any special allowance granted to the member of the armed forces in the nature of Island (duty) allowance	Andaman & Nicobar and Lakshadweep Group of Islands	Rs. 3,250 per month:]

Provided that any assessee claiming exemption in respect of the allowances mentioned at serial numbers 7 and 8 shall not be entitled to the exemption in respect of the allowance referred to at serial number 2:

Provided further that any assessee claiming exemption in respect of the allowance mentioned at serial number 9 shall not be entitled to the exemption in respect of disturbed area allowance referred to at serial number 2.]

[54a][*(3) Notwithstanding anything contained in sub-rules (1) and (2), an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC shall be entitled to exemption only in respect of the allowances mentioned in sub-clauses* (a) *to* (c) *of sub-rule (1) and at serial No.11 of the Table below sub-rule (2) to the extent and subject to the conditions, if any, specified therein.*]

[55]**[Circumstances and conditions for the purposes of clause (*19*) of section 10.**

2BBA. (1) For the purposes of clause (*19*) of section 10, the circumstances of death of a member of the armed forces (including para-military forces) of the Union in the course of operational duties shall be the following, namely :—

(*i*) acts of violence or kidnapping or attacks by terrorists or anti-social elements;

(*ii*) action against extremists or anti-social elements;

(*iii*) enemy action in international war;

(*iv*) action during deployment with a peace keeping mission abroad;

(*v*) border skirmishes;

(*vi*) laying or clearance of mines including enemy mines as also mine sweeping operations;

(*vii*) explosions of mines while laying operationally oriented mine-fields or lifting or negotiation mine-fields laid by the enemy or own forces in operational areas near international borders or the line of control;

(*viii*) in the aid of civil power in dealing with natural calamities and rescue operations;

54. Inserted by the IT (Twenty-first Amdt.) Rules, 2000, w.r.e.f. 29-2-2000.

54a. Inserted by the IT (Thirteenth Amdt.) Rules, 2020, w.e.f. **1-4-2021** and shall accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

55. Inserted by the IT (Fourth Amdt.) Rules, 2005, w.e.f. 9-2-2005.

(*ix*) in the aid of civil power in quelling agitation or riots or revolts by demonstrators.

(2) It shall be certified by the Head of the Department where the deceased member of the armed forces (including para-military forces) last served, or the service headquarters, as the case may be, that the death of such member has occurred in the course of operational duties in circumstances mentioned in sub-rule (1).]

[56][**Percentage of Government Grant for considering university, hospital, etc., as substantially financed by the Government for the purposes of clause (*23C*) of section 10.**

2BBB. For the purposes of sub-clauses (*iiiab*) and (*iiiac*) of clause (*23C*) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.]

[57][**Amount of annual receipts for the purposes of sub-clauses (*iiiad*) and (*iiiae*) of clause (*23C*) of section 10.**

2BC. (1) For the purposes of sub-clause (*iiiad*) of clause (*23C*) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any university or other educational institution, existing solely for educational purposes and not for purposes of profit, shall be one crore rupees.

(2) For the purposes of sub-clause (*iiiae*) of clause (*23C*) of section 10, the amount of annual receipts on or after the 1st day of April, 1998, of any hospital[58] or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, shall be one crore rupees.]

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56. Inserted by the IT (Thirteenth Amdt.) Rules, 2014, w.e.f. 12-12-2014.

57. Inserted by the IT (Eighteenth Amdt.) Rules, 1998, w.e.f. 12-10-1998. For purposes of exemption of income under section 10(*23C*)(*iiiad*), limit of aggregate annual receipts of Rs. 1 crore should be computed for each educational institution of assessee-trust - *CIT* v. *Children's Education Society* [2013] 34 taxmann.com 285 (Kar.). In terms of provisions of section 10(*23C*)(*iiiad*), annual receipts of school or university may be taken into consideration and not total income of society running that school or university - *Param Hans Swami Uma Bharti Mission* v. *Asstt. CIT* [2013] 140 ITD 429/29 taxmann.com 223 (Delhi - Trib.)/*Asstt. CIT* v. *Shiksha Samiti* [2015] 60 taxmann.com 428 (Delhi - Trib.). In order to claim benefit under section 10(*23C*)(*iiiad*), the assessee-society is not required to be notified under section 10(*23C*) - *Shriram Education Foundation* v. *DIT* [2014] 41 taxmann.com 117/62 SOT 76 (Delhi - Trib.). Approval of prescribed authority is necessary for claiming exemption only under section 10(*23C*)(*vi*) and not under section 10(*23C*)(*iiiad*) - *A.S. Kupparaju & Brothers Charitable Foundation Trust* v. *Dy. DIT (Exemption)* [2014] 47 taxmann.com 165/149 ITD 531 (Bang. - Trib.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

58. An assessee running a maternity home is also entitled to deduction u/s 10(*23C*)(*iiiae*) - *Nehru Prasutika Aspatal Samiti* v. *CIT* [2014] 41 taxmann.com 283 (All.).

[Application for the purpose of grant of approval for the exemption under sub-clause (*iv*), sub-clause (*v*), sub-clause (*vi*) and sub-clause (*via*) of clause (*23C*) of section 10.

2C. (1) The prescribed authority under sub-clause (*iv*), sub-clause (*v*), sub-clause (*vi*) and sub-clause (*via*) of clause (*23C*) of section 10 shall be the Principal Commissioner or Commissioner whom the Central Board of Direct Taxes may authorise to act in this behalf.

(2) An application for grant of approval for the exemption under sub-clause (*iv*), sub-clause (*v*), sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10 to any fund or institution, any trust (including any other legal obligation) or institution, any university or other educational institution and any hospital or other institution (hereinafter referred to as 'the applicant') shall be made in Form No. 56 and shall be verified by the person who is authorised to verify the return of income under section 140, as applicable to the assessee.

(3) Form No. 56 shall be furnished electronically,—

(*i*) under digital signature, if the return of income is required to be furnished under digital signature; or

(*ii*) through electronic verification code in a case not covered under clause (*i*).

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure, standards and procedure of furnishing and verification of Form No. 56 and shall be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said form so furnished.]

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59. Rule 2C substituted for rules 2C and 2CA by the IT (Sixth Amdt.) Rules, 2019, w.e.f. 5-11-2019. Prior to their substitution, rules 2C and 2CA, as amended by the IT (Ninth Amdt.) Rules, 1989, w.e.f. 28-8-1989, IT (Eighteenth Amdt.) Rules, 1998, w.e.f. 12-10-1998, IT (Third Amdt.) Rules, 2001, w.e.f. 3-4-2001, IT (Seventeenth Amdt.) Rules, 2001, w.r.e.f. 3-4-2001, IT (Fourteenth Amdt.) Rules, 2006, w.e.f. 24-11-2006, IT (Fifth Amdt.) Rules, 2007, w.e.f. 1-6-2007, IT (Sixth Amdt.) Rules, 2007, w.e.f. 1-6-2007 and IT (Eleventh Amdt.) Rules, 2014, w.e.f. 10-11-2014, read as under :

'2C. *Guidelines for approval under sub-clauses (iv) and (v) of clause (23C) of section 10.*—(1) The prescribed authority under sub-clauses (*iv*) and (*v*) of clause (*23C*) of section 10 shall be the Chief Commissioner or Director General, to whom the application shall be made as provided in sub-rule (2) :

Provided that on or after the specified date, the prescribed authority* under sub-clauses (*iv*) and (*v*) of clause (*23C*) of section 10 shall be the Principal Commissioner or Commissioner, to whom the application shall be made as provided in sub-rule (2).

(2) The application to be furnished under sub-clauses (*iv*) and (*v*) of clause (*23C*) of section 10 by a fund, trust or institution shall be in Form No. 56.

Explanation.—For the purposes of this rule,—

(*i*) "Chief Commissioner or Director General" means the Chief Commissioner or Director General whom the Central Board of Direct Taxes may, authorise to act as prescribed authority for the purposes of sub-clause (*iv*) or sub-clause (*v*) of clause (*23C*) of section 10 in relation to any fund or trust or institution;

(Contd. on p. 1.28)

(Contd. from p. 1.27)

(*ii*) "Principal Commissioner or Commissioner" means the Principal Commissioner or Commissioner whom the Central Board of Direct Taxes may, authorise to act as prescribed authority for the purposes of sub-clause (*iv*) or sub-clause (*v*) of clause (*23C*) of section 10 in relation to any fund or trust or institution;

(*iii*) "specified date" means the date which the Central Board of Direct Taxes may, by notification" in the Official Gazette, specify in this behalf.

**2CA. *Guidelines for approval under sub-clauses* (vi) *and* (via) *of clause* (23C) *of section 10.*—(1) The prescribed authority under sub-clauses (*vi*) and (*via*) of clause (*23C*) of section 10 shall be the Chief Commissioner or Director General, to whom the application shall be made as provided in sub-rule (2) :

Provided that on or after the specified date* the prescribed authority* under sub-clauses (*vi*) and (*via*) of clause (*23C*) of section 10 shall be the Principal Commissioner or Commissioner, to whom the application shall be made as provided in sub-rule (2).

(1A) The prescribed authority† under sub-clauses (*vi*) and (*via*) of clause (*23C*) of section 10 shall be the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) for applications received prior to 3rd day of April, 2001:

Provided that in case of applications received prior to 3rd day of April, 2001 where no order has been passed granting approval or rejecting the application as on 31st day of May, 2007, the prescribed authority‡ under sub-clauses (*vi*) and (*via*) of clause (*23C*) of section 10 shall be the Chief Commissioner or Director General.

(2) An application for approval shall be made in Form No. 56D by any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10.

(3) The approval of the Central Board of Direct Taxes or Chief Commissioner or Director General, as the case may be, granted before the 1st day of December, 2006 shall at any one time have effect for a period not exceeding three assessment years.[$]

Explanation.—For the purposes of this rule,—

(*i*) "Chief Commissioner or Director General" means the Chief Commissioner or Director General whom the Central Board of Direct Taxes may, authorise to act as prescribed authority for the purposes of sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10 in relation to any fund or trust or institution;

(*ii*) "Principal Commissioner or Commissioner" means the Principal Commissioner or Commissioner whom the Central Board of Direct Taxes may, authorise to act as prescribed authority for the purposes of sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10 in relation to any fund or trust or institution;

(*iii*) "specified date" means the date which the Central Board of Direct Taxes may, by notification" in the Official Gazette, specify in this behalf.'

*With effect from 15-11-2014, prescribed authority is Commissioner of Income-tax (Exemptions).

**See also Circular No. 14/2015, dated 17-8-2015 [Clarification on certain issues relating to grant of approval under section 10(*23C*)(*vi*)]. Circular No. 14/2015 cannot be said to be overriding provisions of the Act - *See Kanya Mahavidyala* v. *CIT (Exemptions)* [2017] 81 taxmann.com 174 (Asr. - Trib.).

A society or a trust or other similar body running educational institutions solely for educational purposes and having the overall object of not to make any profit can be regarded as 'other educational institution', even if some surplus arises from its activities - *Aditanar Educational Foundation* v. *Addl. CIT* [1997] 90 Taxman 528/224 ITR 310 (SC)/ *CIT* v. *A.M.M. Arunachalam Educational Society* [2000] 243 ITR 229/[2003] 128 Taxman 285 (Mad.). An institution existing solely for educational purposes cannot be denied exemption merely because it has derived income from activities like carrying on of business or renting out of properties or publication of text books, so long as such income is also applied on educational purposes - *CIT* v. *Kshatriya Girls Schools Managing Board* [1998] 101 Taxman 555 (Mad.)/

(Contd. on p. 1.29)

(Contd. from p. 1.28)

Brahmin Education Society v. *Asstt. CIT* [1996] 89 Taxman 434 (Ker.)/*CWT* v. *Kikabi's Educational Trust* [2000] 242 ITR 697/[2002] 124 Taxman 680 (Mad.)/*CIT* v. *Delhi Kannada Education Society* [2000] 113 Taxman 503 (Delhi). Institution must have carried on some educational activity during the relevant year; mere taking of steps for the establishment of the institution will not suffice - *CIT* v. *Devi Educational Institution* [1984] 18 Taxman 221/[1985] 153 ITR 571 (Mad.). Plain words of third proviso to section 10(*23C*) do not require that application of income by educational institution has to be in India but impartation of education must be in India if applicant desires exemption under section 10(*23C*)(*vi*); to make section with proviso workable, monitoring conditions in third proviso like application/utilization of income, pattern of investments to be made, etc., could be stipulated as conditions by prescribed authority subject to which approval could be granted and the compliance with terms and conditions stipulated by prescribed authority would be a matter of decision at time of assessment, as availability of exemption has to be evaluated every year in order to find out whether institution existed during relevant year solely for educational purposes and not for profit - *American Hotel & Lodging Association, Educational Institute* v. *CBDT* [2008] 170 Taxman 306/301 ITR 86 (SC). Institution existing outside India for educational purposes but not so existing in India is not entitled to exemption - *CIT* v. *Oxford University Press* [1996] 226 ITR 77/89 Taxman 353 (Bom.). Element of normal schooling where there are teachers and students must be present - *CIT* v. *Sorabji Nusserwanji Parekh* [1993] 201 ITR 939/66 Taxman 411 (Guj.). Where primary object is merely to finance students for pursuing their education, the institution cannot be treated as 'other educational institution' - *CIT* v. *Saraswathi Poor Students Fund* [1984] 150 ITR 142/[1985] 20 Taxman 211 (Kar.). A museum cannot be said to exist solely for educational purposes - *CIT* v. *Maharaja Sawai Mansinghji Museum Trust* [1987] 33 Taxman 279/[1988] 169 ITR 379 (Raj.). A co-operative union having as its main object the imparting of education is entitled to exemption on its income - *Gujarat State Co-operative Union* v. *CIT* [1992] 195 ITR 279 (Guj.). A society having multiple objects including education but carrying on only educational activities ever since its inception cannot be denied exemption on the ground that there is a possibility of the society carrying on non-educational objects in the future - *Digember Jain Society for Child Welfare* v. *Director-General of Income-tax (Exemption)* [2009] 185 Taxman 255 (Delhi). Mere possibility that society in future might pursue non-charitable activities, would not constitute grounds to reject approval under section 10(*23C*)(*vi*) - *C.P. Vidya Niketan Inter College Shikshan Society* v. *UOI* [2013] 40 taxmann.com 76/213 Taxman 139 (Mag.) (All.).

Hospital which is run on commercial lines and in which the managing director or director gets some advantage or exercises some patronage while running the hospital, cannot be denied exemption so long as the dominant purpose is a philanthropic one, and the profits are deployed in the same institution or in some other similar institution - *CIT* v. *Pulikkal Medical Foundation (P.) Ltd.* [1994] 210 ITR 299/73 Taxman 402 (Ker.). Exemption is admissible when surplus derived from one health centre is utilised on establishment of another health centre - *CIT* v. *Economic & Entrepreneurship Development Foundation* [1991] 59 Taxman 156/188 ITR 540 (Cal.). Actually admitting patients and providing them with treatment is not necessary; an institution with facilities for diagnosis and treatment of patients cannot be denied exemption on the ground that there is no facility for treating in-patients - *Mangilal Gotawat Charitable Trust* v. *CIT* [1984] 150 ITR 682/[1985] 20 Taxman 207 (Kar.).

†In *Orissa Trust of Technical Education* v. *Chief CIT* [2008] 178 Taxman 363 (Ori.), it was held that prescribed authority for the years 1999-2001 was the CBDT and thereafter such power of approval came to be vested in the Chief Commissioner. In terms of rule 2CA it is the 'prescribed authority' alone which could deal with the application for approval and no other. No amount of waiver or consent can confer jurisdiction on a Court which it inherently lacks or where none exists. Lack of jurisdiction strikes at the very root of exercise of statutory powers and vitiates the proceeding themselves. Thus, merely because the assessee filed application for approval for period 1999-2001 to the Chief Commissioner and not to CBDT this fact of making such applications by itself could not and would not vest any authority of law with the Chief Commissioner to deal with such application. The conduct of the assessee in making of an application before an authority, who otherwise lacks jurisdiction cannot in law

(Contd. on p. 1.30)

[60][**Guidelines for approval under clause (*23F*) of section 10.**

2D. (1) For the purposes of clause (*23F*) of section 10, the prescribed authority shall be the Director of Income-tax (Exemptions) having jurisdiction over the venture capital fund or the venture capital company who makes application for approval under sub-rule (2).

(2) An application for approval shall be made in Form No. 56A by a venture capital fund or a venture capital company to the Director of Income-tax (Exemptions) referred to in sub-rule (1).

(3) Every application under sub-rule (2) may be made in any previous year in which any income by way of dividend or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking shall not be included in computing the total income of such venture capital fund or venture capital company.

(4) Every application for approval under sub-rule (2) shall be accompanied by the following documents, namely :—

(*a*) a copy of trust deed or certificate of incorporation under the Companies Act, 1956 (1 of 1956);

(*b*) balance sheets and profit and loss account for three previous years immediately preceding the previous year in which the application is made;

(*c*) Forms 56B and 56C duly filled in and signed by the applicant; and

(*d*) a copy of the certificate of registration issued by the Securities and Exchange Board of India.

(5) The Director of Income-tax (Exemptions) shall approve the venture capital fund or the venture capital company, as the case may be, subject to the following conditions, namely :—

(*a*) the venture capital fund or the venture capital company, as the case may be, is registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*b*) [61][***]

(*c*) [61][***]

(*Contd. from p. 1.29*)

amount to vesting such an authority, with jurisdiction to deal with the same. (*See* also *Maharashtra Academy of Engineering & Educational Research* v. *Director General of Income-tax* [2009] 226 CTR (Bom.) 408)

‡*See* Notification No. SO 852(E), dated 30-5-2007.

$*See* also Circular No. 7/2010, dated 27-10-2010 (Period of validity of approval).

60. Inserted by the IT (Eleventh Amdt.) Rules, 1995, w.e.f. 18-7-1995.

61. Omitted by the IT (Twenty-sixth* Amdt.) Rules, 1998, w.e.f. 1-4-1999. Prior to their omission, clauses (*b*) and (*c*), as inserted by the IT (Eleventh Amdt.) Rules, 1995, w.e.f. 18-7-1995, read as under :

(*Contd. on p. 1.31*)

(*d*) a venture capital fund or a venture capital company, as the case may be, shall not invest more than [62][twenty] per cent of its total monies raised or total paid-up share capital in one venture capital undertaking;

(*e*) a venture capital fund or a venture capital company, as the case may be, shall not make investment of more than forty per cent in the equity capital of one venture capital undertaking;

(*f*) every venture capital fund and venture capital company, shall maintain books of account and get such books audited by an accountant, as defined in *Explanation* to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Director of Income-tax (Exemptions) before the due date of filing of the return under sub-section (1) of section 139.

(Contd. from p. 1.30)

"(*b*) every venture capital fund invests an amount not less than eighty per cent of its total monies (hereinafter referred to as such monies) raised for investment by way of acquiring equity shares of the venture capital undertakings in the following manner, namely:—

(*i*) twenty per cent or more of such monies shall be invested during or before the end of the previous year in which the application is made under sub-rule (3) by way of acquiring equity shares of the venture capital undertakings;

(*ii*) fifty per cent or more of such monies [including the investments referred to in sub-clause (*i*) above] shall be invested, during or before the end of the previous year immediately succeeding the previous year in which investment of twenty per cent referred to in sub-clause (*i*) has been made, by way of acquiring equity shares of the venture capital undertakings;

(*iii*) eighty per cent or more of such monies [including the investments, referred to in sub-clause (*ii*) above] shall be invested, during or before the end of the previous year immediately succeeding the previous year in which fifty per cent investment referred to in sub-clause (*ii*) has been made, by way of acquiring equity shares of the venture capital undertakings;

(*c*) every venture capital company invests an amount not less than eighty per cent of its total paid-up capital (hereinafter referred to as such capital) by way of acquiring equity shares of the venture capital undertakings in the following manner, namely :—

(*i*) twenty per cent or more of such capital shall be invested, during or before the end of the previous year in which the application is made under sub-rule (3), by way of acquiring equity shares of the venture capital undertakings;

(*ii*) fifty per cent or more of such capital [including the investments referred to in sub-clause (*i*) above] shall be invested, during or before the end of the previous year immediately succeeding the previous year in which investment of twenty per cent referred to in sub-clause (*i*) above has been made, by way of acquiring equity shares of the venture capital undertakings;

(*iii*) eighty per cent or more of such capital [including the investments referred to in sub-clause (*ii*) above] shall be invested, during or before the end of the previous year in which fifty per cent investment referred to in sub-clause (*ii*) has been made, by way of acquiring equity shares of the venture capital undertakings;"

*Should be (Twenty-fifth Amdt.) Rules, 1998.

62. Substituted for "five" by the IT (Sixth Amdt.) Rules, 1997, w.e.f. 28-4-1997.

(6) The Director of Income-tax (Exemptions) shall pass an order in writing granting approval or refusing approval to the venture capital fund or venture capital company, as the case may be :

Provided that the Director of Income-tax (Exemptions) shall not refuse the approval except in concurrence with the Director-General of Income-tax (Exemptions):

Provided further that every venture capital fund or venture capital company, as the case may be, shall be given an opportunity of being heard before passing an order under this rule.

(7) The Director of Income-tax (Exemptions) shall withdraw the approval granted under sub-rule (6) in the following circumstances, namely :—

(*a*) if the venture capital fund or the venture capital company—

(*i*) fails to make investments in the manner specified in sub-rule (5);

(*ii*) invests more than [63][twenty] per cent of the monies raised by a venture capital fund or [63][twenty] per cent of paid-up share capital of the venture capital company, as the case may be, in one venture capital undertaking;

(*iii*) makes an investment of more than forty per cent in the equity capital in one venture capital undertaking;

(*iv*) fails to maintain books of account and get such accounts audited by an accountant or fails to file the audit report required in clause (*f*) of sub-rule (5);

(*v*) violates the provisions of the Act or rules made thereunder;

(*b*) if the certificate of registration granted under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), to a venture capital fund or a venture capital company is suspended or cancelled by the Securities and Exchange Board of India.]

[64][**Guidelines for approval under clause (*23FA*) of section 10.**

2DA. (1) An application for approval shall be made in Form No. 56AA by a venture capital fund or a venture capital company to the Central Government.

(2) Every application under sub-rule (1) may be made in any previous year in which any income by way of dividend or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking shall not be included in computing the total income of such venture capital fund or venture capital company.

(3) Every application for approval under sub-rule (1) shall be accompanied by the following documents, namely :—

63. Substituted for "five" by the IT (Sixth Amdt.) Rules, 1997, w.e.f. 28-4-1997.

64. Inserted by the IT (Thirty-fourth Amdt.) Rules, 1999, w.e.f. 27-12-1999.

(*a*) a copy of the trust deed registered under the provision of the Registration Act, 1908 or a certificate of incorporation under the Companies Act, 1956 (1 of 1956);

(*b*) balance sheets and profit and loss accounts for three previous years immediately preceding the previous year in which the application is made;

(*c*) Forms 56BA and 56CA duly filled in and signed by the applicant; and

(*d*) a copy of the certificate of registration issued by the Securities and Exchange Board of India under sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(4) The Central Government may approve the venture capital fund or the venture capital company, as the case may be, subject to the following conditions, namely :—

(*a*) a venture capital fund or a venture capital company, as the case may be, is registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*b*) a venture capital fund or a venture capital company, as the case may be, shall not invest more than twenty-five per cent of its total monies raised or total paid-up share capital in one venture capital undertaking;

(*c*) every venture capital fund and venture capital company, shall maintain books of account and get such books audited by an accountant, as defined in *Explanation* to sub-section (2) of section 288 of the Act and, furnish the report of such audit duly signed and verified by such accountant to the Central Government before the due date of filing of the return under sub-section (1) of section 139 of the Act.

(5) The Central Government may pass an order in writing granting approval or refusing approval to the venture capital fund or venture capital company, as the case may be :

Provided that no order refusing the approval shall be passed unless an opportunity of being heard has been given to the venture capital fund or the venture capital company.

(6) The approval of the Central Government under sub-rule (5) shall at any one time have effect for such assessment year or years, not exceeding three assessment years.

(7) The Central Government shall withdraw the approval granted under sub-rule (5) in the following circumstances :—

(*a*) if the venture capital fund or the venture capital company—

(*i*) fails to make investments in the manner specified in sub-rule (4);

(*ii*) invests more than twenty-five per cent of the monies raised by a venture capital fund or twenty-five per cent of paid-up share capital

of the venture capital company, as the case may be, in one venture capital undertaking;

(*iii*) fails to maintain books of account and get such accounts audited by an accountant or fails to file the audit report required in clause (*d*) of sub-rule (4);

(*iv*) violates the provisions of the Act or rules made thereunder;

(*b*) if the certificate of registration granted under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), to a venture capital fund or a venture capital company is suspended or cancelled by the Securities and Exchange Board of India.]

[64a][Other conditions to be satisfied by the pension fund.

2DB. *For the purposes of clause (23FE) of section 10, the pension fund shall be required to satisfy the following other conditions, namely:—*

(i) *it is regulated under the law of a foreign country including the laws made by any of its political constituents being a province, State or local body, by whatever name called, under which it is created or established, as the case may be;*

(ii) *it is responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;*

(iii) *the earnings and assets of the pension fund are used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (ii) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person;*

(iv) *it does not undertake any commercial activity whether within or outside India;*

(v) *it shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB;*

(vi) *it shall file return of income on or before the due date specified under sub-section (1) of section 139 and furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10, during the financial year, from an accountant as defined in the* Explanation *below sub-section (2) of section 288.*

Guidelines for notification under clause (*23FE*) of section 10.

2DC. *(1) For the purposes of notification under sub-clause (iv) of clause (c) of* Explanation *to the clause (23FE) of section 10, the pension fund shall make*

64a. Rules 2DB and 2DC inserted by the IT (Twentieth Amdt.) Rules, 2020, w.e.f. **17-8-2020**.

an application in Form No. 10BBA enclosing therewith relevant documents and evidence, to the,—

(i) Member (Legislation), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi during the financial year 2020-2021;

(ii) Member, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi having supervision and control over the work of Foreign Tax and Tax Research Division during the other financial years.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure, standards and procedure of furnishing and verification of Form No. 10BBB and Form No. 10BBC, and shall be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said forms so furnished under this sub-rule.]

[65][Guidelines for approval under clause (*23G*) of section 10[66].

2E. (1) An application for approval shall be made on or after the 1st day of June, 1998 in Form No. 56E by an enterprise to the Central Government.

(2) Every application for approval made under sub-rule (1) shall be accompanied by the following documents, namely :—

(*a*) a copy of certificate of incorporation under the Companies Act, 1956 (1 of 1956) or a copy of the document evidencing the constitution of the enterprise and its legal status;

(*b*) a copy of the project report or agreement in respect of the eligible business duly approved by the Central Government or any State Government or any local authority or any other statutory body, as the case may be;

(*c*) balance sheets and profit and loss accounts for the three previous years immediately preceding the previous year in which the application has been made and also for the relevant part of the previous year in which the application has been made :

Provided that an application made under sub-rule (1) may be accompanied by the balance sheets and profit and loss accounts for less than three previous years where an enterprise has been formed at any time during the three previous years immediately preceding the previous year in which the application has been made and also for the relevant part of the previous year in which the application has been made.

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65. Substituted by the IT (Sixth Amdt.) Rules, 2004, w.e.f. 12-1-2004. Earlier, rule 2E was inserted by the IT (Eighteenth Amdt.) Rules, 1998, w.e.f. 12-10-1998.

66. Section 10(23G) was omitted by the Finance Act, 2006, w.e.f. 1-4-2007.

(3) The Central Government shall approve an enterprise for the purposes of clause (23G) of section 10, if such enterprise is wholly engaged in the eligible business.

(4) The Central Government may, before approving an enterprise, call for such documents (including audited annual accounts) or information from the enterprise, as it thinks necessary in order to satisfy itself that such enterprise is wholly engaged in the eligible business and that Government may also make such enquiries as it may deem necessary in this behalf.

(5) The Central Government shall pass an order in writing while granting approval or refusing approval to the enterprise :

Provided that no order refusing the approval shall be passed unless an opportunity of being heard has been given to the enterprise.

(6) Every enterprise approved under sub-rule (5) shall maintain books of account and get such books audited by an accountant, as defined in *Explanation* to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Chief Commissioner of Income-tax under whose jurisdiction it is assessed, before the due date of filing of the return under sub-section (1) of section 139.

(7) Where the enterprise,—

(*a*) ceases to carry on the eligible business; or

(*b*) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (6); or

(*c*) fails to furnish the audit report as required by sub-rule (6),

the Chief Commissioner of Income-tax shall, after making such enquiries as he may deem necessary, furnish a report on the circumstances referred to in clauses (*a*), (*b*) and (*c*) to the Central Government, within six months from the due date of filing of return under sub-section (1) of section 139.

(8) The Central Government, on being satisfied that any or all of the circumstances referred to in clauses (*a*), (*b*) and (*c*) of sub-rule (7) exist, shall withdraw the approval granted under sub-rule (5) :

Provided that no order withdrawing the approval shall be passed unless an opportunity of being heard has been given to the enterprise.

Explanation : For the purposes of this rule,—

(*a*) the expression "enterprise" means any enterprise wholly engaged in the eligible business;

(*b*) the expression "eligible business" means the business referred to in sub-section (4) of section 80-IA or a housing project referred to in sub-section (10) of section 80-IB and which fulfils the conditions specified in the said sub-sections or a hotel project or a hospital project as defined in clauses (*g*) and (*h*) of *Explanation 1* to clause (23G) of section 10.]

[67][Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under clause (47) of section 10.

2F. [68][(1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Debt Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *vide* notification No. DNBS.233/CGM (US)-2011, dated the 21st November, 2011 as amended *vide* notification No. DNBR.020 CGM (CDS) - 2015, dated the 14th May, 2015.[69]

(2) The funds of the Infrastructure Debt Fund shall be invested only in Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operations that are—

(i) Public Private Partnership Projects and are a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment;

(ii) Non-Public Private Partnership Projects and Public Private Partnership Projects without a project authority, in sectors where there is no project authority.]

(3) The Infrastructure Debt Fund shall issue rupee denominated bonds or foreign currency bonds in accordance with the directions of Reserve Bank of India (RBI) and the relevant regulations under the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time.

(4) The terms and conditions of any bond issued by the Infrastructure Debt Fund shall be in accordance with the said directions of the Reserve Bank of India and the regulations referred to in sub-rule (3).

(5) In case of an investor in the aforesaid bond being a non-resident, the original or initial maturity of bond, at time of first investment by such non-resident investor, shall not be less than a period of five years.

[70][***]

(6) The investment made by the Infrastructure Debt Fund in an individual project or project belonging to a group at any time, shall not exceed twenty per cent of the corpus of the fund.

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67. Inserted by the IT (Fifth Amdt.) Rules, 2012, w.e.f. 30-4-2012.

68. Substituted by the IT (Seventeenth Amdt.) Rules, 2015, w.r.e.f. 14-5-2015. Prior to their substitution, sub-rules (1) and (2) read as under:

"(1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Development Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *vide* Notification No. DNBS.233/CGM (US)-2011, dated the 21st November, 2011.

(2) The funds of Infrastructure Debt Fund shall be invested only in the Public Private Partnership Infrastructure Projects and Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operation and such Infrastructure Debt Fund is a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment."

69. Now superseded by Non-Banking Financial Company - Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016 (*see* Taxmann's Statutory Guide to NBFCs, 2020 Edn.).

70. Omitted by the IT (Seventh Amdt.) Rules, 2019, w.e.f. 16-9-2019. Prior to its omission, proviso read as under :

"Provided that the investment made by a non-resident investor in such bonds shall be subject to a lock in period of not less than three years, but the non-resident investor may transfer the bond to another non-resident investor within such lock in period."

(7) No investment shall be made by the Infrastructure Debt Fund in any project where its sponsor or the associate enterprise or the group of such sponsor has a substantial interest.

(8) The Infrastructure Debt Fund shall file its return of income as required by sub-section (4C) of section 139 on or before the due date.

(9) In case the Infrastructure Debt Fund does not fulfil any of the conditions provided in this rule or directions of the Reserve Bank of India, all provisions of the Act shall apply as if it is not an Infrastructure Debt Fund referred to in clause (47) of section 10 of the Act.

Explanation.—For the purpose of this rule,—

(*i*) "associate enterprise" shall have the same meaning as assigned to it in section 92A of the Act;

(*ii*) "concern" shall have the same meaning as in clause (*a*) of *Explanation 3* of "sub-section (22) of section 2 of the Act;

(*iii*) [71]"concessionaire", "tripartite agreement" and "project authority" respectively shall have the same meaning as assigned to them in the Infrastructure Debt Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011;

(*iv*) "corpus" means the total funds of the Infrastructure Debt Fund raised for the purpose of investment;

(*v*) [72]"group" means a group as defined in clause (*mm*) of section 2† of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

(*vi*) a person shall be deemed to have substantial interest in—

(*a*) a company if he is the beneficial owner (including beneficial ownership held by one or more of his relatives, in case the person is an individual) of shares (not being the shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10 per cent of the voting power; or

(*b*) a concern other than a company if he is, at any time during the previous year, beneficially entitled to not less than 20 per cent of the income of such concern;

(*vii*) "relative", in relation to an individual, means—

(*a*) spouse of the individual;

(*b*) brother or sister of the individual;

(*c*) brother or sister of the spouse of the individual;

(*d*) brother or sister of either of the parents of the individual;

(*e*) any lineal ascendant or descendant of the individual;

(*f*) any lineal ascendant or descendant of the spouse of the individual;

(*g*) spouse of the persons referred to in sub-clauses (*b*) to (*f*); or

(*h*) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual;

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71. For definitions of "concessionaire", "tripartite agreement" and "project authority", under para 3 of the Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *see* **Appendix.**

72. For definition of "group" under regulation 2(*mm*) of SEBI (Mutual Funds) Regulations, 1996, *see* **Appendix.**

*Should be read as 'clause'.

†Should be read as 'regulation'.

(*viii*) "sponsor" means a non-banking financial company, or a bank which is allowed to act as sponsor of Infrastructure Debt Fund in accordance with the directions of Reserve Bank of India.]

[73][**Valuation of perquisites**[74].

[75]**3.** For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:—

[76](1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below (*See* **page 1.43**) :

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73. Substituted by the IT (Thirteenth Amdt.) Rules, 2009, w.r.e.f. 1-4-2009 (as corrected by Notification No. 2/2010 [F. No. 142/25/2009-SO(TPL)], dated 12-1-2010). Prior to its substitution, rule 3, as amended by the IT (Fourteenth Amdt.) Rules, 2007, w.e.f. 1-4-2008/w.r.e.f. 1-4-2006, IT (Twenty-second Amdt.) Rules, 2001, w.r.e.f. 1-4-2001, IT (Seventeenth Amdt.) Rules, 2002, w.e.f. 1-8-2002, IT (Nineteenth Amdt.) Rules, 2002, w.r.e.f. 1-4-2001, IT (Second Amdt.) Rules, 2002, w.r.e.f. 1-4-2001, IT (Third Amdt.) Rules, 2003, w.r.e.f. 1-4-2002, IT (Thirteenth Amdt.) Rules, 2004, w.r.e.f. 1-10-2004, IT (First Amdt.) Rules, 2004, w.e.f. 1-4-2004 and IT (Seventh Amdt.) Rules, 2005, w.e.f. 1-4-2005, read as under :—

'3. *Valuation of perquisites.*—For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:—

(1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below:

TABLE I

Sl. No.	*Circumstances*	*Where accommodation is unfurnished*	*Where accommodation is furnished*
(1)	*(2)*	*(3)*	*(4)*
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State or serving with any body or undertaking under the control of such Government on deputation.	License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(2)	Where the accommodation is provided by any other employer and—		
	(*a*) where the accommodation is owned by the employer, or	(*i*) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census; (*ii*) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; (*iii*) 7.5% of salary in other areas,	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such

(Contd. on p. 1.40)

(Contd. from p. 1.39)

Sl No	Circumstances	Where accommodation is unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
	(b) where the accommodation is taken on lease or rent by the employer.	in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee. Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.	furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year. The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(3)	Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another)	Not applicable	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee :

Provided that nothing contained in this sub-rule shall apply to any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site which,—

(*i*) being of a temporary nature and having plinth area not exceeding 800 square feet, is located not less than eight kilometers away from the local limits of any municipality or a cantonment board; or

(*ii*) is located in a remote area:

Provided further that where on account of his transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value with reference to the Table above for a period not exceeding 90 days and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table.

(2) (*A*) The value of perquisite provided by way of use of motor car to an employee by an employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, shall be determined in accordance with the following Table, namely :—

(Contd. on p. 1.41)

(Contd. from p. 1.40)

TABLE II

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
(1)	Where the motor car is owned or hired by the employer and—		
	(*a*) is used wholly and exclusively in the performance of his official duties;	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.
	(*b*) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.
	(*c*) is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and		
	(*i*) the expenses on maintenance and running are met or reimbursed by the employer,	Rs. 1,200 (*plus* Rs. 600, if chauffeur is also provided to run the motor car)	Rs. 1,600 (*plus* Rs. 600, if chauffeur is also provided to run the motor car)
	(*ii*) the expenses on running and maintenance for such private or personal use are fully met by the assessee.	Rs. 400 (*plus* Rs. 600, if chauffeur is provided by the employer to run the motor car)	Rs. 600 (*plus* Rs. 600, if chauffeur is also provided to run the motor car)
(2)	Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and		
	(*i*) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.

(Contd. on p. 1.42)

(Contd. from p. 1.41)

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
	(*ii*) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	Subject to the provisions of clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(*c*)(*i*) above.	Subject to the provisions contained in clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(*c*)(*i*) above.
(3)	Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
	(*i*) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes,	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	Not applicable
	(*ii*) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee.	Subject to the provisions of clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by an amount of Rs. 600:	

Provided that where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all or any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car in accordance with Sl. No. (1)(*c*)(*i*) of Table II as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars in accordance with Sl. No. (1)(*b*) of Table II as if he had been provided with such car or cars exclusively for his private or personal purposes.

(*B*) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(*ii*) or 3(*ii*) of Table II, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as reduced by such higher amount attributable to official use of the vehicle provided that the following conditions are fulfilled:—

(*a*) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;

(*b*) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

(Contd. on p. 1.43)

TABLE I

Sl. No.	Circumstances	Where accommodation is unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(2)	Where the accommodation is provided by any other employer and— (*a*) where the accommodation is owned by the employer, or	(*i*) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census; (*ii*) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; (*iii*) 7.5% of salary in other areas,	The value of perquisites as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third

(Contd. from p. 1.42)

Explanation.—For the purposes of this sub-rule, the normal wear and tear of a motor-car shall be taken at 10% per annum of the actual cost of the motor-car or cars.

(3) The value of benefit to the employee or any member of his household resulting from the provision by the employer of services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer. The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

(4) The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water. Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

(Contd. on p. 1.44)

Sl. No.	Circumstances	Where accommodation is unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
		in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.	party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
	(*b*) where the accommodation is taken on lease or rent by the employer.	Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(3)	Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another).	Not applicable.	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee:

(Contd. from p. 1.43)

(5) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality. Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered:

(Contd. on p. 1.45)

Provided that nothing contained in this sub-rule shall apply to any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site—

(*i*) which, being of a temporary nature and having plinth area not exceeding 800 square feet, is located not less than eight kilometres away from the local limits of any municipality or a cantonment board; or

(*ii*) which is located in a remote area:

Provided further that where on account of his transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value with reference to the Table above for a period not exceeding 90 days and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table.

Explanation.—For the purposes of this sub-rule, where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,—

(*i*) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and

(*ii*) the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No. (2)(*a*) of Table I, as if the accommodation is owned by the employer.

(2)(*A*) The value of perquisite by way of use of motor car to an employee by an employer shall be determined in accordance with the following Table, namely:—

(Contd. from p. 1.44)

Provided that where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, nothing contained in this sub-rule shall apply if the cost of such education or the value of such benefit per child does not exceed Rs. 1,000 p.m.

(6) The value of any benefit or amenity resulting from the provision by an employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Income-tax Act and is engaged in the carriage of passengers or goods to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity :

Provided that nothing contained in this sub-rule shall apply to the employees of an airline or the railways.

(7) In terms of provisions contained in sub-clause (*vi*) of clause (*2*) of section 17, the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined in the manner provided hereunder:

(Contd. on p. 1.46)

TABLE II

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	*Circumstances*	*Where cubic capacity of engine does not exceed 1.6 litres*	*Where cubic capacity of engine exceeds 1.6 litres*
(1)	*(2)*	*(3)*	*(4)*
(1)	Where the motor car is owned or hired by the employer and—		
	(*a*) is used wholly and exclusively in the performance of his official duties;	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.
	(*b*) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.
	(*c*) is used partly in the performance of duties and partly for private or personal		

(Contd. from p. 1.45)

(*i*) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, constituted under the State Bank of India Act, 1955 (23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

However, no value would be charged if such loans are made available for medical treatment in respect of diseases specified in rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate Rs. 20,000 :

Provided that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

(Contd. on p. 1.47)

Sl. No.	*Circumstances*	*Where cubic capacity of engine does not exceed 1.6 litres*	*Where cubic capacity of engine exceeds 1.6 litres*
(1)	*(2)*	*(3)*	*(4)*
	purposes of his own or any member of his household and—		
	(*i*) the expenses on maintenance and running are met or reimbursed by the employer;	Rs. 1,800 (*plus* Rs. 900, if chauffeur is also provided to run the motor car)	Rs. 2,400 (*plus* Rs. 900, if chauffeur is also provided to run the motor car)
	(*ii*) the expenses on running and maintenance for private or personal use are fully met by the assessee.	Rs. 600 (*plus* Rs. 900, if chauffeur is also provided by the employer to run the motor car)	Rs. 900 (*plus* Rs. 900, if chauffeur is also provided to run the motor car)
(2)	Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and—		
	(*i*) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	No value: **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.

(Contd. from p. 1.46)

(*ii*) The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, for any holiday availed of by the employee or any member of his household, other than concession or assistance referred to in rule 2B of these rules, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf. Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public. Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity. However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(Contd. on p. 1.48)

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
	(*ii*) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	Subject to the provisions of clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(*c*)(*i*) above.	Subject to the provisions of clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(*c*)(*i*) above.
(3)	Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
	(*i*) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;	No value : **Provided** that the documents specified in clause (*B*) of this sub-rule are maintained by the employer.	Not applicable :
	(*ii*) such reimbursement is for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee.	Subject to the provisions of clause (*B*) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount of Rs. 900.	

(Contd. from p. 1.47)

(*iii*) The value of free food and non-alcoholic beverages provided by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided that nothing contained in this sub-rule shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof in either case does not exceed Rs. 50 per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

(*iv*) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, shall be determined as the sum equal to the amount of such gift. However, where the value of such gift, voucher or token, as the case may be, is below Rs. 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as '*nil*'.

(Contd. on p. 1.49)

Provided that where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car in accordance with Sl. No. (1)(*c*)(*i*) of Table II as if the employee had been provided one motor-car for use partly in the performance of

(Contd. from p. 1.48)

(*v*) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card), provided by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax. However, there shall be no value of such benefit where the expenses are incurred wholly and exclusively for official purposes and the following conditions are fulfilled—

(*a*) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;

(*b*) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.

(*vi*) (*A*) The value of benefit to the employee resulting from the payment or reimbursement by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by any member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity. However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

(*B*) Nothing contained in this sub-rule shall apply if such expenditure is incurred wholly and exclusively for business purposes and the following conditions are fulfilled:—

(*a*) complete details in respect of such expeuditure are maintained by the employer which may, *inter alia*, include the date of expenditure, the nature of expenditure and its business expediency;

(*b*) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties;

(*c*) nothing contained in this sub-rule shall apply for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(*vii*) The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10% per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(*viii*) The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer directly or indirectly to the employee or any member of his household shall be determined to be the amount representing the actual cost of such asset to the employer as reduced by the cost of normal wear and tear calculated at the rate of 10% of such cost for each completed year during which such asset was put to use by the employer and as further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer:

(Contd. on p. 1.50)

his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars in accordance with Sl. No. (1)(*b*) of Table II as if he had been provided with such car exclusively for his private or personal purposes.

(Contd. from p. 1.49)

Provided that in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50% and in the case of motor cars at the rate of 20% by the reducing balance method.

(*ix*) The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any:

Provided that nothing contained in this item shall apply to the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer.

(8) [***]

(9) This rule shall come into force with effect from the 1st day of April, 2001:

Provided that the employee may, at his option, compute the value of all perquisites made available to him or any member of his household for the period beginning on 1st day of April, 2001 and ending on 30th day of September, 2001 in accordance with the Rules as they stood prior to this amendment:

Provided further that for an employee being an employee of an airline, the provisions of sub-rule (6) shall come into force with effect from the 1st day of April, 2002.

Explanation.—For the purposes of this rule—

(*i*) "accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure;

(*ii*) "entertainment" includes hospitality of any kind and also, expenditure on business gifts other than free samples of the employers own product with the aim of advertising to the general public;

(*iii*) "hotel" includes licensed accommodation in the nature of motel, service apartment or guest house;

(*iv*) "member of household" shall include—

(*a*) spouse(s)

(*b*) children and their spouses

(*c*) parents

(*d*) servants and dependants;

(*v*) "remote area", for purposes of proviso to this sub-rule means an area that is located at least 40 kilometres away from a town having a population not exceeding 20,000 based on latest published all-India census;

(*vi*) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:—

(*a*) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(*b*) employer's contribution to the provident fund account of the employee;

(*c*) allowances which are exempted from payment of tax;

(*d*) the value of perquisites specified in clause (*2*) of section 17 of the Income-tax Act;

(*e*) any payment or expenditure specifically excluded under proviso to sub-clause (*iii*) of clause (*2*) or proviso to clause (*2*) of section 17;

(*vii*) "maximum outstanding monthly balance" means the aggregate outstanding balance for each loan as on the last day of each month.'

(Contd. on p. 1.51)

(Contd. from p. 1.50)

Earlier rule 3 was amended by the IT (Amdt.) Rules, 1974, w.e.f. 2-4-1974, IT (Third Amdt.) Rules, 1974, w.e.f. 21-9-1974, IT (Fourth Amdt.) Rules, 1976, w.e.f. 2-4-1976, IT (Eighth Amdt.) Rules, 1986, w.e.f. 1-4-1987, IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988 and IT (Fifth Amdt.) Rules, 1995, w.e.f. 2-6-1995.

74. *See* sections 17(*2*) and 295(2)(*c*). *See* also Circular No. 20/2020, dated 3-12-2020 [(TDS under section 192 for financial year 2020-21)]. There is no merit in submission that rule 3 which was substituted with effect from 1-4-2001 is illegal as section 17(*2*)(*vi*) came into effect only from 1-4-2002 - *BHEL Employees' Association* v. *Union of India* [2003] 128 Taxman 309/261 ITR 15 (Kar.).

75. Rule 3, as amended by SO 940(E), dated 25-9-2000 [IT (22nd Amdt.) Rules, 2001], is constitutionally valid - *Tata Workers' Union* v. *Union of India* [2002] 123 Taxman 426/256 ITR 725 (Jharkhand)/*P.N. Tiwari* v. *Union of India* [2003] 133 Taxman 482 (All.)/*BHEL Employees' Association* v. *Union of India* [2003] 128 Taxman 309/261 ITR 15 (Kar.)/*Aditya Cement Staff Club* v. *Union of India* [2003] 131 Taxman 609 (Raj.)/*All India State Bank of Indore Officer's Coordination Committee* v. *CBDT* [2004] 134 Taxman 303 (MP)/*BHEL Executives' Officers Association* v. *Dy. CIT* [2004] 269 ITR 390/141 Taxman 40 (Mad.)/*National Federation of Insurance Field Workers of India* v. *Union of India* [2004] 265 ITR 84/135 Taxman 307 (Uttaranchal)/*V.K. Prasad* v. *Union of India* [2004] 271 ITR 178/[2005] 143 Taxman 96 (Ker.)/*Federal Bank of Officers' Association* v. *Union of India* [2004] 140 Taxman 173 (Ker.). Rule 3 is mandatory and not directory, and cannot be ignored even by the Tribunal—*CIT* v. *K.S. Sundaram* [1999] 105 Taxman 317 (Mad.), affirmed by Supreme Court in [2001] 119 Taxman 782/251 ITR 781. For bringing the value of a perquisite to tax, the benefit or amenity must have a legal origin, and it cannot take within its ambit any unauthorised advantage availed by the employee - *CIT* v. *C. Kulandaivelu Konar* [1975] 100 ITR 629 (Mad.); *CIT* v. *A.R. Adaikappa Chettiar* [1973] 91 ITR 90 (Mad.); *M.M. Metha* v. *CIT* [1979] 117 ITR 362 (Cal.); *CIT* v. *S.S.M. Lingappan* [1981] 7 Taxman 71/129 ITR 597 (Mad.); *CIT* v. *Jawaharlal Nagpal* [1987] 34 Taxman 333/[1988] 171 ITR 136 (MP). Contingent payments to which the employee has no right till the contingency arises are not covered, and the employee must have a vested right to claim it - *CIT* v. *L.W. Russel* [1964] 53 ITR 91 (SC). Amounts disallowed in employer's assessment cannot automatically be treated as a benefit in the hands of the recipient of the benefit—*CIT* v. *K. Govindarajulu* [1988] 173 ITR 112/37 Taxman 297 (Mad.)/*CIT* v. *S.S.M. Lingappan* [1981] 7 Taxman 71/129 ITR 597 (Mad.). The power given to CBDT to identify 'fringe benefit' and 'amenity' cannot be struck down as an excessive piece of delegation - *BHEL Employees' Association* v. *Union of India* [2003] 128 Taxman 309/261 ITR 15 (Kar.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

76. Provision of accommodation must be based on employer-employee relationship, and must have arisen as a result of posting the employee at a particular place of duty. Where appointment was not under contract but under a board resolution containing no terms and conditions of service, assessee was not a 'servant' of the company which provided rent-free accommodation - *CIT* v. *Lakshmipati Singhania* [1973] 92 ITR 598 (All.). Perquisite is taxable even if employee has neither used the accommodation as his residence nor has forgone or waived the right to enjoy the benefit - *CIT* v. *Bawa Singh Chauhan* [1984] 150 ITR 8/16 Taxman 180 (Delhi). Rent-free accommodation provided by foreign employer to State Government officer sent on deputation, is a taxable perquisite - *CIT* v. *Dr. K.L. Parekh* [1994] 208 ITR 965/77 Taxman 353 (Raj.). Where company pays rent directly to the landlord in respect of premises provided rent-free to its director, perquisite must be valued under section 17(*2*)(*i*) and not under section 17(*2*)(*iv*) - *CIT* v. *Jagdish Prosad Goenka* [1992] 196 ITR 15/64 Taxman 580 (Cal.). Furniture supplied at a particular hiring rate by employer to employee cannot be treated to be at concessional rate so as to be treated as a perquisite - *Corporation Bank Officers' Organisation* v. *Corporation Bank* [2004] 269 ITR 222 (Cal.). "Salary" received

(Contd. on p. 1.52)

(*B*) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(*ii*) or 3(*ii*) of Table II, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed

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(Contd. from p. 1.51)

from more than one employer must be aggregated for purposes of valuation of perquisite, even if accommodation is provided rent-free by only one of the employers - *CIT* v. *Mohanlal Jalan* [1989] 43 Taxman 246 (Bom.). Provision is to be applied even to cases where the employer takes accommodation on rent and then provides it to the employer - *CIT* v. *K.S. Sundaram* [1999] 105 Taxman 317 (Mad.) affirmed by Supreme Court in [2001] 119 Taxman 782/251 ITR 781. Classification of employees as Government employees and other employees in the public sector or private sector for determining the value of perquisite on rent-free accommodation is not violative of article 14 of the Constitution - *Arun Kumar* v. *Union of India* [2006] 155 Taxman 659 (SC) and *BHEL Employees' Association* v. *Union of India* [2003] 128 Taxman 309/261 ITR 15 (Kar.). The word 'rent' used in section 17(*2*)(*ii*) would mean charges for using unfurnished accommodation provided by an employer to its employee; one should not read either fair rent or normal rent or standard rent in the expression 'rent' used in sub-clause (*ii*) of clause (*2*) of section 17, for there is no just reasons, nor there is any such reason to do so - *Coal Mines Officers' Association of India* v. *Union of India* [2004] 137 Taxman 92 (Cal.). Different values fixed for big city and small city cannot be construed as unreasonable - *Tata Workers' Union* v. *Union of India* [2002] 256 ITR 725/123 Taxman 426 (Jharkhand). Rule 3 is in the nature of 'machinery-provision' and applies only to the cases of 'concession' in the matter of rent respecting any accommodation provided by an employer to his employees; inspite of legal position that rule 3 is *intra vires*, valid and is not inconsistent with provisions of parent Act, under section 17(*2*)(*ii*) it is open to an assessee-employee to contend that there is no 'concession' in matter of accommodation provided by employer to employees and case is not covered by section 17(*2*)(*ii*) - *Arun Kumar* v. *UOI* [2006] 155 Taxman 659 (SC). Tax paid by employer on behalf of employee cannot be taken into consideration for computing perquisite value of 'rent free accommodation'- *CIT* v. *Telsuo Mitera* [2012] 21 taxmann.com 487/208 Taxman 344 (Delhi)/ *CIT* v. *Hidechito Shiga* [2012] 345 ITR 269 (Delhi). Where assessee was initially provided hotel accommodation by employer company and later flat was taken on lease, there was no merit in contention of assessee that no perquisite value should be included in total income of assessee in respect of hotel accommodation; however, there was merit in contention of assessee that as per rule 3(*a*)(*iii*)(*A*), perquisite value of accommodation should be computed separately for each period when hotel accommodation and flat, respectively, were provided to assessee - *Asstt. CIT* v. *Andrew Holland* [2008] 20 SOT 217 (Mum. - Trib.). It is only lease rental paid or payable and nothing else which can be taken into account for purpose of valuation of residential accommodation under rule 3(1) but where along with rent-free residential accommodation assessee's employer had provided certain benefits or amenities or services covered by 'amenities agreement' to assessee through service provider, value thereof had rightly been worked out and taxed under rule 3(8) - *Harit Nagpal* v. *ITO* [2008] 23 SOT 281 (Mum. - Trib.). For treating any payment as 'rent', there must be the relationship of tenant-landlord between the payer and the payee - *Harit Nagpal* v. *ITO* [2008] 23 SOT 281 (Mum. - Trib.). Notional interest on deposits paid by employer to landlord cannot be taken into consideration while computing perquisite value of residential accommodation - *CIT* v. *Shankar Krishnan* [2012] 21 taxmann.com 61/207 Taxman 233 (Bom.). Carrying of official work from residence and maintaining office are two different aspects. Where there was no office in residence of assessee-employee, same could not be considered to be used for official purposes - *CIT* v. *Subrata Roy* [2013] 219 Taxman 133/38 taxmann.com 374 (All.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

by the employer as reduced by such higher amount attributable to official use of the vehicle provided that the following conditions are fulfilled :—

(*a*) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;

(*b*) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

Explanation.—For the purposes of this sub-rule, the normal wear and tear of a motor-car shall be taken at 10 per cent per annum of the actual cost of the motor-car or cars.

[77](3) The value of benefit to the employee or any member of his household resulting from the provision by the employer of services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer. The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

(4) The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water. Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

[78](5) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality. Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered :

Provided that where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the

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77. Treating salary paid by employer to domestic servant provided to employee as a taxable perquisite cannot be said to result in any double taxation - *BHEL Employees' Association* v. *Union of India* [2003] 128 Taxman 309/261 ITR 15 (Kar.).

78. *See Birla Vidya Niketan* v. *ITO* [2008] 166 Taxman 472 (Delhi)/ *CIT* v. *Director, Delhi Public School* [2011] 202 Taxman 318/14 taxmann.com 45 (Punj. & Har.)/ *CIT (TDS)* v. *Delhi Public School* [2008] 167 Taxman 134 (Delhi).

employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, nothing contained in this sub-rule shall apply if the cost of such education or the value of such benefit per child does not exceed one thousand rupees per month.

(6) The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity :

Provided that nothing contained in this sub-rule shall apply to the employees of an airline or the railways.

(7) In terms of provisions contained in sub-clause (*viii*) of clause (*2*) of section 17, the following other benefits or amenities and value thereof shall be determined in the manner provided hereunder:

[79](*i*) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate [80]charged per annum by the State Bank of India, constituted under the State Bank of India Act, 1955 (23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household:

79. Since rule 3(7)(*i*) prescribes definite method to calculate value of interest free loan provided by employer to employees and its impact differs depending upon income bracket of employees, it cannot be said to be imposing hardship upon employees; hence, it is constitutionally valid - *All India Union Bank Officers Federation* v. *UOI* [2016] 69 taxmann.com 371/240 Taxman 92 (Mad.). Rule will apply even to cases where, in addition to debtor-creditor relationship, there exists employer-employee relationship—*CIT* v. *C. Kulandaivelu Konar* [1975] 100 ITR 629 (Mad.). Mere fact that loan was treated as deemed dividend under section 2(*22*)(*e*) will not be an impediment to the application of this rule—*CIT* v. *T.P.S.H. Selva Saroja* [2000] 244 ITR 671/[2003] 131 Taxman 1 (Mad.). The provisions shall be read down with a rider that the rate provided in the rule will be applicable unless the assessee proves to the satisfaction of the Assessing Officer that the rate of interest or any part thereof charged by the employer does not amount to any concession or benefit, having regard to the rate of interest charged for such type of loan by public financial institutions—*V.K. Prasad* v. *Union of India* [2004] 271 ITR 178 (Ker.) *See* also *National Federation of Insurance Field Workers of India* v. *Union of India* [2004] 135 Taxman 307 (Uttaranchal).

80. For rate of interest, *see* Taxmann's Master Guide to Income-tax Rules. In *All India Punjab National Bank Officers' Association* v. *Chairman-cum-Managing Director, Punjab National Bank* [2010] 190 Taxman 221/321 ITR 324 (MP), it was held that as per rule 3(7) Legislature has intended to value concessional loan for purpose of arriving at value of concession by making a simple calculation of difference between SBI rate and rate paid by employee; there is no merit in submission that determination of perquisite in matter of concessional loan by comparing it to SBI PLR rate is arbitrary.

Provided that no value would be charged if such loans are made available for medical treatment in respect of diseases specified in rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate twenty thousand rupees:

Provided further that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as bas been reimbursed to the employee under any medical insurance scheme.

(*ii*) The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than concession or assistance referred to in rule 2B of these rules, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf. Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public. Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity:

Provided that where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(*iii*) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided that nothing contained in this clause shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof in either case does not exceed fifty rupees per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation:

[80a]**[Provided further** *that the exemption provided in the first proviso in respect of free food and non-alcoholic beverage provided by such em-*

80a. Inserted by the IT (Thirteenth Amdt.) Rules, 2020, w.e.f. **1-4-2021** and shall accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

ployer through paid voucher shall not apply to an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC.]

(*iv*) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift:

Provided that where the value of such gift, voucher or token, as the case may be, is below five thousand rupees in the aggregate during the previous year, the value of perquisite shall be taken as "*nil*".

(*v*) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:

Provided that there shall be no value of such benefit where expenses are incurred wholly and exclusively for official purposes and the following conditions are fulfilled:—

(*a*) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;

(*b*) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(*vi*) (*A*) The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:

Provided that where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

(*B*) Nothing contained in this clause shall apply if such expenditure is incurred wholly and exclusively for business purposes and the following conditions are fulfilled:—

(*a*) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of

expenditure, the nature of expenditure and its business expediency;

(*b*) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(C) Nothing contained in this clause shall apply for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(*vii*) The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10 per cent per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(*viii*) The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer directly or indirectly to the employee or any member of his household shall be determined to be the amount representing the actual cost of such assets to the employer as reduced by the cost of normal wear and tear calculated at the rate of 10 per cent of such cost for each completed year during which such asset was put to use by the employer and as further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer :

Provided that in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50 per cent and in the case of motor cars at the rate of 20 per cent by the reducing balance method.

(*ix*) The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any :

Provided that nothing contained in this clause shall apply to the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer.

(8)(*i*) For the purposes of sub-clause (*vi*) of clause (*2*) of section 17, the fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in accordance with the provisions of clause (*ii*) or clause (*iii*).

(*ii*) In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be

the average of the opening price and closing price of the share on that date on the said stock exchange :

Provided that where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share :

Provided further that where, on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be—

(*a*) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or

(*b*) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(*iii*) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

(*iv*) For the purpose of this sub-rule,—

(*a*) "closing price" of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange :

Provided that where the stock exchange quotes both "buy" and "sell" prices, the closing price shall be the "sell" price of the last settlement;

(*b*) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*c*) "opening price" of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange :

Provided that where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement;

(*d*) "recognised stock exchange" shall have the same meaning assigned to it in clause (*f*) of section 2[81] of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*e*) "specified date" means,—

(*i*) the date of exercising of the option; or

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81. For definition of "recognised stock exchange" under section 2(*f*) of the Securities Contracts (Regulation) Act, 1956, *see* **Appendix**.

(*ii*) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

(9) For the purposes of sub-clause (*vi*) of clause (*2*) of section 17, the fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

Explanation.—For the purposes of this sub-rule, "merchant banker" and "specified date" shall have the meanings assigned to them in sub-clause (*b*) and sub-clause (*e*) respectively of clause (*iv*) of sub-rule (8).

(10) This rule shall come into force with effect from the 1st day of April, 2009.

Explanation.—For the purposes of this rule—

(*i*) "accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure;

(*ii*) "entertainment" includes hospitality of any kind and also, expenditure on business gifts other than free samples of the employers own product with the aim of advertising to the general public;

(*iii*) "hotel" includes licensed accommodation in the nature of motel, service apartment or guest house;

(*iv*) "member of household" shall include—

(*a*) spouse(s),

(*b*) children and their spouses,

(*c*) parents, and

(*d*) servants and dependants;

(*v*) "remote area", for purposes of proviso to this sub-rule means an area that is located at least 40 kilometres away from a town having a population not exceeding 20,000 based on latest published all-India census;

(*vi*) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:—

(*a*) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(*b*) employer's contribution to the provident fund account of the employee;

(*c*) allowances which are exempted from payment of tax;

(*d*) the value of perquisites specified in clause (*2*) of section 17 of the Income-tax Act;

(*e*) any payment or expenditure specifically excluded under proviso to sub-clause (*iii*) of clause (*2*)* or proviso to clause (*2*) of section 17;

(*f*) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

(*vii*) "maximum outstanding monthly balance" means the aggregate outstanding balance for each loan as on the last day of each month.]

[82][**Exemption of medical benefits from perquisite value in respect of medical treatment of prescribed diseases or ailments in hospitals approved by the Chief Commissioner.**

3A. (1) [83][In granting approval to any hospital other than a hospital for Indian system of medicine and homoeopathic treatment for the purposes of sub-clause (*b*) of clause (*ii*) of the proviso to sub-clause (*vi*) of clause (*2*) of section 17], the Chief Commissioner shall satisfy himself that the hospital is registered with the local authority and fulfils the following requirements, namely :—

(*i*) The building used for the hospital complies with the municipal bye-laws in force.

(*ii*) The rooms are well ventilated, lighted and are kept in clean and hygienic conditions.

(*iii*) At least ten iron spring beds are provided for patients.

(*iv*) At least one properly equipped operation theatre is provided, with minimum floor space of 180 square feet and with a separate sterilisation room.

(*v*) At least one labour room is provided, with minimum floor space of 180 square feet, in case the hospital provides medical service for maternity cases.

(*vi*) Aseptic conditions are maintained in the operation theatre and the labour room.

(*vii*) A duty room is provided for the nursing staff on duty.

(*viii*) Adequate space for storage of medicines, food articles, equipments, etc., is provided.

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82. Inserted by the IT (Nineteenth Amdt.) Rules, 1992, w.e.f. 7-10-1992. Earlier rule 3A was inserted by the IT (Second Amdt.) Rules, 1985, w.e.f. 1-4-1985 and later omitted by the IT (Amdt.) Rules, 1986, w.e.f. 1-4-1986.

83. Substituted for "In granting approval to any hospital for the purposes of sub-clause (*b*) of clause (*ii*) of the proviso to clause (*2*) of section 17" by the IT (Nineteenth Amdt.) Rules, 2004, w.e.f. 7-12-2004.

*Sub-clause (*iii*) of clause (*2*) of section 17 was omitted by the Finance Act, 2007, w.e.f. 1-4-2008

(*ix*) The water used in the hospital or nursing home is fit for drinking.

(*x*) Adequate arrangements are made for isolating septic and infectious patients.

(*xi*) The hospital is provided with and maintains :—

(*a*) high pressure sterilizer and instrument sterilizer;

(*b*) oxygen cylinders and necessary attachments for giving oxygen;

(*c*) adequate surgical equipments, instruments and apparatus including intravenous apparatus;

(*d*) a pathological laboratory for testing of blood, urine and stool;

(*e*) electro-cardiogram monitoring system;

(*f*) stand-by generator for use in case of power failure.

(*xii*) There is at least one qualified doctor available on duty round the clock for every twenty beds or fraction thereof.

(*xiii*) In hospitals providing intensive care unit facilities, there are at least two qualified doctors available on duty round the clock exclusively for such intensive care unit.

(*xiv*) One nurse is on duty round the clock for every five beds or a fraction thereof.

(*xv*) In hospitals providing intensive care unit facilities, there are at least four nurses provided exclusively for every four beds or fraction thereof for such intensive care unit.

(*xvi*) The hospital maintains record of health of every patient containing information about the patient's name, address, occupation, sex, age, date of admission, date of discharge, diagnosis of disease and treatment undertaken.

[84][(1A) In granting approval to any hospital for Indian system of medicine and homoeopathic treatment for the purposes of sub-clause (*b*) of clause (*ii*) of the proviso to sub-clause (*vi*) of clause (*2*) of section 17, the Chief Commissioner shall satisfy himself that the hospital fulfils the conditions specified *vide* Office Memorandum dated the 6th June, 2002[85], by the Department of Indian Systems of Medicine and Homoeopathy, Ministry of Health and Family Welfare for approval of private hospitals for Indian system of medicine and homoeopathic treatment to Central Government Health Scheme beneficiaries and Central Government employees.]

84. Inserted by the IT (Nineteenth Amdt.) Rules, 2004, w.e.f. 7-12-2004.

85. For text of Office Memorandum, dated 6-6-2002, *see* Taxmann's Master Guide to Income-tax Rules.

(2) For the purpose of sub-clause (*b*) of clause (*ii*) of the proviso to [86][sub-clause (vi)* of] clause (*2*) of section 17, the prescribed diseases or ailments shall be the following, namely :—

(*a*) cancer;

(*b*) tuberculosis;

(*c*) acquired immunity deficiency syndrome;

(*d*) disease or ailment of the heart, blood, lymph glands, bone marrow, respiratory system, central nervous system, urinary system, liver, gall bladder, digestive system, endocrine glands or the skin, requiring surgical operation;

(*e*) ailment or disease of the eye, ear, nose or throat, requiring surgical operation;

(*f*) fracture in any part of the skeletal system or dislocation of vertebrae requiring surgical operation or orthopaedic treatment;

(*g*) gynaecological or obstetric ailment or disease requiring surgical operation, caesarean operation or laperoscopic intervention;

(*h*) ailment or disease of the organs mentioned at (*d*), requiring medical treatment in a hospital for at least three continuous days;

(*i*) gynaecological or obstetric ailment or disease requiring medical treatment in a hospital for at least three continuous days;

(*j*) burn injuries requiring medical treatment in a hospital for at least three continuous days;

(*k*) mental disorder - neurotic or psychotic - requiring medical treatment in a hospital for at least three continuous days;

(*l*) drug addiction requiring medical treatment in a hospital for at least seven continuous days;

(*m*) anaphylactic shocks including insulin shocks, drug reactions and other allergic manifestations requiring medical treatment in a hospital for at least three continuous days.

Explanation.—For the purpose of this rule,—

(*a*) "qualified doctor" means a person who holds a degree recognised by the Medical Council of India and is registered by the Medical Council of any State;

(*b*) "nurse" means a person who holds a certificate of a recognised Nursing Council and is registered under any law for the registration of nurses;

(*c*) "surgical operation" includes treatment by modern methodology such as angioplasty, dialysis, lithotropsy, laser or cryo-surgery.]

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86. Inserted by the IT (Nineteenth Amdt.) Rules, 2004, w.e.f. 7-12-2004.

* 'Sub-clause (vi) of' should be omitted.

[86a][**Annual accretion referred to in the sub-clause (*viia*) of clause (2) of section 17 of the Act.**

3B. *For the purposes of sub-clause* (viia) *of clause (2) of section 17 of the Act, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year (hereinafter in this rule referred to as the current previous year) to balance to the credit of the fund or scheme referred to in sub-clause* (vii) *of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely:—*

$$TP = (PC/2) \times R + (PC_1 + TP_1) \times R$$

Where,

TP = Taxable perquisite under sub-clause (viia) *of clause (2) of section 17 of the Act for the current previous year;*

TP_1 = Aggregate of taxable perquisite under sub-clause (viia) *of clause (2) of section 17 of the Act for the previous year or years commencing on or after 1st day of April, 2020 other than the current previous year* (See Note);

PC = Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakhs to the specified fund or scheme during the previous year;

PC_1 = Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakhs to the specified fund or scheme for the previous year or years commencing on or after 1st day of April, 2020 other than the current previous year (See Note);

R = I/ Favg ;

I = Amount or aggregate of amounts of income accrued during the current previous year in the specified fund or scheme account;

Favg = (Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year + Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the last day of the current previous year)/2.

Explanation.—*For the purposes of this rule, "specified fund or scheme" shall mean a fund or scheme referred to in sub-clause* (vii) *of clause (2) of section 17 of the Act.*

Note: *Where the amount or aggregate of amounts of TP_1 and PC_1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP_1 and PC_1.*]

86a. Inserted by the IT (First Amdt.) Rules, 2021, w.e.f. 1-4-2021.

B.—Income from house property

[87][**Unrealised rent.**

[88]**4.** For the purposes of the *Explanation* below sub-section (1) of section 23, the amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where,—

(*a*) the tenancy is *bona fide;*

(*b*) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(*c*) the defaulting tenant is not in occupation of any other property of the assessee;

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.]

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87. Substituted by the IT (Eighth Amdt.) Rules, 2001, w.e.f. 1-4-2002 (*i.e.*, assessment years 2002-03 onwards). Prior to its substitution, rule 4, as amended by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988, read as under :

'4. *Unrealised rent.*—Under clause (*x*) of sub-section (1) of section 24, deduction shall be allowed of such part of income in respect of which tax is payable under the head "Income from house property" as is equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where—

(*a*) the tenancy is *bona fide;*

(*b*) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(*c*) the defaulting tenant is not in occupation of any other property of the assessee;

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless; and

(*e*) the annual value of the property to which the unpaid rent relates has been included in the assessed income of the previous year during which that rent was due and tax has been duly paid on such assessed income :

Provided that the deduction to be allowed on this account shall not exceed the income under the head "Income from house property" included in the total income as computed without making any deduction under this rule.'

88. Where tenant sets off rent due against damages for defective maintenance of premises, landlord is not entitled to any deduction towards unrealised rent - *ITO* v. *Purshottam Lal Roongata Family Welfare Trust* [1996] 58 ITD 19 (Jp. - Trib.) (SB).

Where a suit for recovery is pending and it was not shown that tenant is not capable of satisfying the decree, deduction is not admissible. The unrealised rent must be incapable of realisation for being eligible for deduction - *CIT* v. *Airflo Transport (I) (P.) Ltd.* [1991] 192 ITR 572 (Kar.). Where tenant deposited rent in court pursuant to the owner refusing to receive it, and owner did not take all reasonable steps to institute legal proceedings, owner is not entitled to any deduction towards unrealised rent - *CIT* v. *Dejoo Tea Co. (India) (P.) Ltd.* [1992] 197 ITR 278/[1993] 69 Taxman 17 (Cal.). Mere fact that landlord has instituted civil suit for recovery of rent will not mean that rent is recoverable - *Shree Niketan* v. *CIT* [1999] 104 Taxman 636 (Guj.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

C.—Profits and gains of business or profession

[89][**Depreciation**[90].

5. (1) Subject to the provisions of sub-rule (2), the allowance under clause (*ii*) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year :

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89. *See* section 295(2)(*d*). Rule 5 has been substituted for the existing rule by the IT (Third Amdt.) Rules, 1987, w.e.f. 2-4-1987. Original rule 5 was amended by the IT (Third Amdt.) Rules, 1964, IT (Sixth Amdt.) Rules, 1969 and IT (Fourth Amdt.) Rules, 1971.

90. **GENERAL** : Parliament is competent to select and classify goods, and prescribe different rates of depreciation - *Titanium Equipments & Anodes Mfg. Co. Ltd.* v. *Union of India* [1994] 207 ITR 566 (Mad.). Allowance of depreciation is not dependent on genuineness or defective nature of accounts - *Allahabad Glass Works* v. *CIT* [1961] 42 ITR 439 (All.)/*P. Appavu Pillai* v. *CIT* [1965] 58 ITR 622 (Mad.). Tribunal cannot take back the depreciation benefit allowed by the Assessing Officer - *MCorp Global (P.) Ltd.* v. *CIT* [2009] 178 Taxman 347 (SC).

OWNER : Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, 1882, Registration Act, 1908 etc. - *Mysore Minerals Ltd.* v. *CIT* [1999] 106 Taxman 166/239 ITR 775 (SC). Registration is not necessary when assessee became owner under court decree - *Hotel Skylark & Restaurant (P.) Ltd.* v. *CIT* [1996] 221 ITR 283 (Punj. & Har.). Registration under Motor Vehicle Act is not a conclusive evidence of ownership of vehicle - *I.C.D.S. Ltd.* v. *CIT* [2013] 29 taxmann.com 129/212 Taxman 550 (SC). Registration under Motor Vehicles Act is not a pre-requisite for claiming depreciation on vehicles - *CIT* v. *Salkia Transport Associates* [1983] 143 ITR 39/13 Taxman 191 (Cal.)/*CIT* v. *Dilip Singh Sardarsingh Bagga* [1993] 201 ITR 995/[1994] 77 Taxman 66 (Bom.)/*CIT* v. *Mirza Ataullaha Baig* [1994] 76 Taxman 495 (Bom.). Registration of conveyance deed is not necessary when assets are transferred to assessee by Government - *CIT* v. *Tamil Nadu Small Industries Development Corporation Ltd.* [1995] 211 ITR 550 (Mad.)/*CIT* v. *Tamil Nadu Small Industries Corporation Ltd.* [1995] 215 ITR 834 (Mad.)/*CIT* v. *Tamil Nadu Dairy Development Corporation Ltd.* [1995] 216 ITR 535/[1996] 87 Taxman 1 (Mad.). Assessee would not be entitled to the claim of depreciation on the consumer durables which were leased by the assessee to various customers, and of which assessee never became owner - *Gowri Shankar Finance Ltd.* v. *CIT* [2001] 116 Taxman 375/248 ITR 713 (Ker.). Firm is entitled to depreciation on assets contributed towards capital by partners, where partnership deed provided that the assets would go back to partners only when firm is dissolved - *CIT* v. *Amber Corporation* [1974] 95 ITR 178 - *CIT* v. *Amber Corporation* [1981] 127 ITR 29/5 Taxman 56/[1994] 74 Taxman 302 (Raj.). Where an HUF used an asset for three months and then transferred the asset to a firm as capital contribution, depreciation is not deniable to HUF - *A.M. Ponnuranga Mudaliar* v. *CIT* [1996] 88 Taxman 482 (Mad.). Depreciation is allowable to firm on trucks transferred as capital contribution by partners, even though transport registration continued in the names of partners - *CIT* v. *Navdurga Transport Co.* [1999] 235 ITR 158 (All.). Company is entitled to depreciation in case of assets purchased in name of directors - *CIT* v. *Varanasi Auto Sales (P.) Ltd.* [2010] 190 Taxman 60 (All.).

'USER' OF ASSET : '*User*' of the asset need not be active use, and can even be passive use - *Capital Bus Service (P.) Ltd.* v. *CIT* [1980] 123 ITR 404/4 Taxman 309 (Delhi)/*Forest Industries*

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Travancore Ltd. v. *CIT* [1964] 51 ITR 329 (Ker.)/ *Vishwanath Bhaskar Sathe* v. *CIT* 10 ITC 166 (Bom.)/ *CIT* v. *India Tea & Timber Trading Co.* [1996] 221 ITR 857/[1997] 90 Taxman 181 (Gauhati). User of machinery for trial production constitutes user for purpose of business - *CIT* v. *Union Carbide (I) Ltd.* [2002] 124 Taxman 859/254 ITR 488 (Cal.)/ *CIT* v. *Mentha & Allied Products* [2010] 326 ITR 297 (All.)/ *CIT* v. *Escorts Tractors Ltd.* [2015] 56 taxmann.com 333 (Delhi)/ *Kasha Cubidor Containers Ltd.* v. *Dy. CIT* [2015] 53 taxmann.com 86 (Guj.). [*Contrary view*: 'User' means actual use and not passive use - *CIT* v. *Suhrid Geigy Ltd.* [1981] 7 Taxman 183/[1982] 133 ITR 884 (Guj.)/ *CIT* v. *Jiwaji Rao Sugar Co. Ltd.* [1969] 71 ITR 319 (MP)/ *Bhukan Venkatesh* v. *CIT* [1937] 5 ITR 626 (Nag.)/ *CIT* v. *J.K. Transport* [1998] 231 ITR 798/96 Taxman 152 (MP)/ *Dy. CIT* v. *Yellamma Dassappa Hospital* [2007] 159 Taxman 58 (Kar.). 'User' denotes actually used and not merely ready to use - *Dinesh Kumar Gulabchand Agrawal* v. *CIT* [2006] 267 ITR 768/141 Taxman 62 (Bom.)]. 'Use' must be during the relevant accounting year - *Liquidators of Pursa Ltd.* v. *CIT* [1954] 25 ITR 265 (SC)/ *Central Provinces Manganese Ore Co. Ltd.* v. *CIT* [1937] 5 ITR 734 (Nag.). Asset need not be used throughout the year - *CIT* v. *S.K. Sahana & Sons* [1946] 14 ITR 106 (Pat.)/ *CIT* v. *Motors & General Stores Ltd.* [1946] 14 ITR 130 (Mad.)/ *CIT* v. *Dalmia Cement Ltd.* [1945] 13 ITR 415 (Pat.). Owner need not necessarily be the user - *CIT* v. *Sarveshwar Nath Nigam* [1963] 48 ITR 853 (Punj.)/ *CIT* v. *Associated Cement Co. Ltd.* [1968] 68 ITR 478 (Bom.). It is not requirement of section 32 that depreciation claim in respect of any asset has to be allowed only if it continues to be used for purposes for which it was being used earlier - *CIT* v. *Udaipur Distillery Co. Ltd. (No. 2)* [2004] 135 Taxman 487/ 268 ITR 446 (Raj.). When the assessee *bona fide* install any machinery and, to his misfortune, it becomes defective and non-functional, it cannot be said that the machinery is not put into use for the purpose of business - *CIT* v. *Sri Chamundeshwari Sugar Ltd.* [2009] 183 Taxman 285 (Kar.).

A commercial asset capable of being exploited by more than one person will remain a commercial asset even if it is temporarily put out of use or hired out - *CIT* v. *Hindustan Aluminium Corporation Ltd.* [1989] 176 ITR 206/44 Taxman 195 (Cal.). Steps taken to set a completed building into gear before shifting the business would be nothing but putting it to 'use' - *CIT* v. *O.P. Khanna & Sons* [1982] 10 Taxman 243/[1983] 140 ITR 558 (Punj. & Har.). Where business is set up, depreciation cannot be denied on the ground that commercial production has not commenced - *CIT* v. *Kanoria General Dealers (P.) Ltd.* [1986] 159 ITR 524/ 26 Taxman 216 (Cal.). Existence of asset is essential, and hence depreciation cannot be allowed on asset which was destroyed - *E.I.D. Parry Ltd.* v. *CIT* 1996 Tax LR 648 (Mad.). Where asset is used partly for business and partly for private purposes, depreciation proportionate to business use is to be allowed - *CIT* v. *Sobharam Jokhiram* [1960] 39 ITR 299 (Pat.). *Kolhus* and *Karhais* are entitled to depreciation for full year even if they are let out for a part of the year - *CIT* v. *Sarveshwar Nath Nigam* [1963] 48 ITR 853 (Punj.), *CIT* v. *Banarsi Dass & Sons* [1966] 61 ITR 414 (Punj.). Usage of asset by assessee himself is not required to claim depreciation; in case of leasing of vehicle, while asset is directly used by lessee-company, it is user in course of business with reference to leasing company - *I.C.D.S. Ltd.* v. *CIT* [2013] 29 taxmann.com 129/212 Taxman 550 (SC). Depreciation is admissible on business assets leased out - *Sadhucharan Roy Chowdhury, In re* [1935] 3 ITR 114 (Cal.)/ *Mangalagiri Sri Umamaheswara Gin & Rice Factory Ltd.* v. *CIT* 2 ITC 251 (Mad.). Depreciation is admissible on buildings and furniture let out in the course of carrying on hotel business - *CIT* v. *Bosotto Bros. Ltd.* [1940] 8 ITR 41 (Mad.). Assessee engaged in leasing out generators is entitled to claim depreciation on generators not returned after expiry of lease period due to lock-out in lessee's factory - *Hindustan Gas & Industries Ltd.* v. *CIT* [1995] 79 Taxman 151 (Cal.). Depreciation is admissible on assets under repairs - *CIT* v. *G.N. Agrawal* [1994] 75 Taxman 30 (Bom.)/ *Khimji Visram & Sons (Gujarat) (P.) Ltd.* v. *CIT* [1994] 209 ITR 993/[1995] 79 Taxman 112 (Guj.). Where factory was under lock-out during entire previous year, depreciation is not admissible - *CIT* v. *Oriental Coal Co. Ltd.* [1994] 206 ITR 682/76 Taxman 240 (Cal.). Assessee was entitled to depreciation on its R&D assets though part of assessee's business remained closed during

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relevant previous year - *CIT* v. *Udaipur Distillary Co. Ltd. (No. 3)* [2004] 134 Taxman 616/268 ITR 451 (Raj.). If the block of assets acquired by the assessee-company during the previous year is applied or employed for the purpose of business of the assessee in that previous year for 180 days, that would make the assessee eligible for full depreciation. The expression 'put to use' in proviso to section 32(1) does not mean 'exploited for 180 days'. The machinery could not be used on all days and every day, right through the year from the date on which it is first put to use. There may be normal working hours even during a day. There may be holidays intervening the 180 days. If the depreciation allowance is to be calculated only with reference to the actual time or day the machinery was actually used, the provision for depreciation will lose its significance - *SIV Industries Ltd.* v. *Dy. CIT* [2008] 306 ITR 114/[2009] 178 Taxman 442 (Mad.). User condition when applied to block of assets, it would mean use of block of assets and not any specific building, machinery, plant or furniture in said block of assets - *CIT* v. *Bharat Aluminium Co. Ltd.* [2010] 187 Taxman 111 (Delhi).

FOR THE PURPOSE OF BUSINESS : As long as asset is utilized for purpose of business of assessee, requirement of section 32 will stand satisfied, notwithstanding non-usage of asset itself by assessee - *I.C.D.S. Ltd.* v. *CIT* [2013] 212 Taxman 550/29 taxmann.com 129 (SC).

Usage of asset by assessee himself is not required to claim depreciation; in case of leasing of vehicle, while asset is directly used by lessee company, it is user in course of business with reference to leasing/lessor company - *I.C.D.S. Ltd.* v. *CIT* [2013] 212 Taxman 550/29 taxmann.com 129 (SC).

OTHERS : Where income is estimated at flat rate/net profit rate, depreciation is separately allowable - *CIT* v. *Bishambhar Dayal & Co.* [1994] 74 Taxman 123 (All.)/*Lali Construction Co.* v. *Asstt. CIT* [2015] 54 taxmann.com 68 (P&H). In tea business, only 40 per cent of the depreciation is deductible while computing written down value - *CIT* v. *Suman Tea & Plywood Industries (P.) Ltd.* [1993] 204 ITR 719/71 Taxman 622 (Cal.). Assets acquired under hire-purchase are eligible for depreciation, subject to certain conditions - *Circular No. 9, dated 23-3-1943* read with *Letter F. No. 27 (20)-IT/59, dated 26-6-1959.* Under hire purchase agreement, depreciation is allowable to the user - *CIT* v. *Nagpur Golden Transport Co.* [1998] 233 ITR 389 (Delhi). Foreign motor cars used in package tours by tour operators or travel agents are eligible for depreciation - *Circular No. 609, dated 29-7-1991.* Fittings in employees' residences are eligible for depreciation - *Letter F. No. 10/14/66 - IT(A-I), dated 12-12-1966.* Law as it stands on 1st April of the relevant financial year must be applied - *CIT* v. *Mirza Ataullaha Baig* [1993] 202 ITR 291/[1994] 76 Taxman 495 (Bom.)/*S.P. Jaiswal Estates (P.) Ltd.* v. *CIT* [1994] 75 Taxman 298 (Cal.)/*CIT* v. *S. Palaniswamy* [1996] 219 ITR 380 (Mad.). Depreciation on assets acquired in earlier years for which no rate was prescribed in those years can be claimed in a later year after rate is prescribed - *CIT* v. *Shri Vallabh Glass Works Ltd.* [1994] 207 ITR 963 (Guj.). Where assessee purchases trucks for which payment is made partly out of own funds and balance out of loan repayable in monthly instalments, property in the vehicles passes on to the assessee as soon as sale is made - *CIT* v. *Mirza Ataullaha Baig* [1994] 76 Taxman 495 (Bom.). Improvements of a permanent nature made to house properties taken on lease by an assessee whose main business was taking such properties on lease and renting them out, are assets entitling to depreciation - *CIT* v. *Chandra Agro (P.) Ltd.* [1979] 117 ITR 251 (All.). Where assessee had by an agreement with vendor purchased an undertaking and also had taken over accrued and future gratuity liability of vendor for a consideration, assessee's claim that since amount towards gratuity was capital expenditure, it was entitled to depreciation on said sum, was not allowable since gratuity liability taken over by assessee did not fall under any of categories specified in section 32 - *CIT* v. *Hoogly Mills Co. Ltd.* [2006] 157 Taxman 347/287 ITR 333 (SC). Where assessee has not claimed depreciation on assets in earlier years under the belief that its activities are agricultural in nature, but in a later year, such activities were held as non-agricultural, assessee can claim depreciation on the original actual cost and not on any notional cost - *CIT* v. *Hybrid Rice International (P.) Ltd.* [2009] 185 Taxman 25 (Delhi). For details, *see* Taxmann's Master Guide to Income-tax Rules.

(Contd. on p. 1.66)

[91][**Provided** *that the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent shall be restricted to forty per cent on the written down value of such block of assets in case of—*

(i) *a domestic company which has exercised option under sub-section (4) of section 115BA, or under sub-section (5) of section 115BAA, or under sub-section (7) of section 115BAB; or*

(ii) *an individual or Hindu undivided family which has exercised option under sub-section (5) of section 115BAC; or*

(iii) *a co-operative society resident in India which has exercised option under sub-section (5) of section 115BAD:*

Provided further *that, for the purposes of section 115BAA, if the following conditions are satisfied, namely:—*

(i) *option under sub-section (5) thereof is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020;*

(ii) *there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A, which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and*

(iii) *such depreciation or allowance for unabsorbed depreciation is not allowed to be set off under clause (ii) or clause (iii) of sub-section (2) thereof, the written down value of the block of asset as on the 1st day of April, 2019 shall be increased by such depreciation or allowance for unabsorbed depreciation not allowed to be set off:*

Provided also *that, for the purposes of section 115BAC and section 115BAD, if the following conditions are satisfied, namely:—*

(i) *the option under sub-section (5) of the respective section is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021;*

(Contd. from p. 1.65)

Circular No. 9/2014, dated 23-4-2014 has clarified that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act. This circular is applicable only to those projects whose ownership is not vested with the assessee under the agreement. For details, *see* Taxmann's Master Guide to Income-tax Rules.

91. Substituted by the IT (Twenty-second Amdt.) Rules, 2020, w.e.f. **1-10-2020**. Prior to its substitution, proviso, as inserted by the IT (Twenty-ninth Amdt.) Rules, 2016, w.r.e.f. 1-4-2016, read as under :

"**Provided** that in case of a domestic company which has exercised option under sub-section (4) of section 115BA, the allowance under clause (*ii*) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent shall be restricted to forty per cent on the written down value of such block of assets."

(ii) there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

(iii) such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD,

the written down value of the block of asset as on the 1st day of April, 2020 shall be increased by such depreciation not allowed to be set off.]

[92][(1A) The allowance under clause (*i*) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purposes of the business of the assessee at any time during the previous year :

Provided that the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the said asset :

Provided further that the undertaking specified in clause (*i*) of sub-section (1) of section 32 of the Act may, instead of the depreciation specified in Appendix IA, at its option, be allowed depreciation under sub-rule (1) read with Appendix I, if such option is exercised before the due date for furnishing the return of income[93] under sub-section (1) of section 139 of the Act,

(*a*) for the assessment year 1998-99, in the case of an undertaking which began to generate power prior to 1st day of April, 1997; and

(*b*) for the assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking :

Provided also that any such option once exercised shall be final and shall apply to all the subsequent assessment years.]

(2) Where any new machinery or plant is installed during the previous year relevant to the assessment year commencing on or after the 1st day of April, 1988, for the purposes of business of manufacture or production of any article or thing and such article or thing—

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

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

a laboratory owned or financed by the Government or a laboratory owned by a public sector company or a University or an institution recognised in this behalf by the Secretary, Department of Scientific and Industrial Research, Government of India,

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92. Inserted by the IT (Twelfth Amdt.) Rules, 1997, w.r.e.f. 2-4-1997.

93. Filing of return of income within prescribed time under section 139(1) along with audit report has to be treated as an option exercised by assessee in terms of second proviso to rule 5(1A) for claiming depreciation - *CIT* v. *Kikani Exports (P.) Ltd.* [2015] 55 taxmann.com 428/230 Taxman 217 (Mad.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

such plant or machinery shall be treated as a part of block of assets qualifying for depreciation at the rate of [94][40] per cent of written down value, if the following conditions are fulfilled, namely :—

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

(*ii*) the return furnished by the assessee for his income, or the income of any other person in respect of which he is assessable, for any previous year in which the said machinery or plant is acquired, shall be accompanied by a [95]certificate from the Secretary, Department of Scientific and Industrial Research, Government of India, to the effect that such article or thing is manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory ; and

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

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

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

(*b*) "public sector company" means any corporation established by or under any Central, State or Provincial Act or a Government company[96] as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; and

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

[97][Form of report by an accountant for claiming deduction under section 32(1)(*iia*).

5A. The report from an accountant which is required to be furnished by the assessee under the third proviso to clause (*iia*) of sub-section (1) of section 32 shall be in Form No. 3AA.]

94. Substituted for "50" by the IT (Tenth Amdt.) Rules, 1991, w.e.f. 1-4-1992.
95. *See* Press Release containing guidelines for issue of certificate. For details, *see* Taxmann's Master Guide to Income-tax Rules.
96. Now section 2(45) of the Companies Act, 2013, *see* **Appendix.**
97. Inserted by the IT (Fourteenth Amdt.) Rules, 2002, w.e.f. 1-4-2003.

[98][99]**Prescribed authority for investment allowance.**

[1][**5AA.**] For the purposes of sub-section (2B) of section 32A, the "prescribed authority" shall be the Secretary, Department of [2][Scientific and Industrial Research], Government of India.]

[3]**[Report of audit of accounts to be furnished under section 32AB(5).**[4]

5AB. The report of audit of the accounts of an assessee, which is required to be furnished under sub-section (5) of section 32AB shall be in [5][Form No. 3AAA.]]

[6]**[Report of audit of accounts to be furnished under section 33AB(2).**

5AC. The report of audit of the accounts of an assessee, which is required to be furnished under sub-section (2) of section 33AB shall be in Form No. 3AC.]

[7]**[Report of audit of accounts to be furnished under section 33ABA(2).**

5AD. The report of audit of the accounts of an assessee, which is required to be furnished under sub-section (2) of section 33ABA, shall be in Form No. 3AD.]

[8]**[Development rebate.**[9]

5B. The deduction to be allowed by way of development rebate in respect of any ship or machinery or plant referred to in sub-section (1A) of section 33 shall be a sum equivalent to—

[10][(*a*) in the case of any such ship—

(*i*) where the ship is acquired by the assessee at any time before the expiry of seven years from the date she was built, thirty per cent of the actual cost of the ship to the assessee ; and

(*ii*) in any other case, twenty per cent of the actual cost of the ship to the assessee ;]

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98. Inserted as rule 5A by the IT (Fifth Amdt.) Rules, 1977, w.e.f. 1-4-1978.
99. *See* section 295(2)(g). No investment allowance is available *qua* machinery installed after 31-3-1990 - *see* SO 233(E), dated 19-3-1990.
1. Existing rule 5A renumbered as rule 5AA by the IT (Fourteenth Amdt.) Rules, 2002, w.e.f. 1-4-2003. Rule 5AA was originally inserted by the IT (Amdt.) Rules, 1981, w.e.f. 1-4-1981 and later on omitted by the IT (Third Amdt.) Rules, 1987, w.e.f. 2-4-1987.
2. Substituted for "Science and Technology" by the IT (Seventh Amdt.) Rules, 1985, w.e.f. 6-1-1985.
3. Inserted by the IT (Sixth Amdt.) Rules, 1986, w.e.f. 1-4-1987.
4. Deduction under section 32AB was available only for the assessment years 1987-88 to 1990-91.
5. Substituted for "Form No. 3AA" by the IT (Fourteenth Amdt.) Rules, 2002, w.e.f. 1-4-2003.
6. Inserted by the IT (Second Amdt.) Rules, 1992, w.e.f. 14-1-1992.
7. Inserted by the IT (Twenty-fourth Amdt.) Rules, 1999, w.e.f. 30-6-1999.
8. Inserted by the IT (Amdt.) Rules, 1965 as rule 5A and later renumbered by the IT (Fifth Amdt.) Rules, 1977, w.e.f. 1-4-1978.
9. No rebate is available *qua* machinery installed after 31-5-1974.
10. Substituted by the IT (Sixth Amdt.) Rules, 1965.

(*b*) in the case of any such machinery or plant installed after the 31st day of March, 1964—

(*i*) where it is installed before the 1st day of April, 1966, for the purposes of business of mining coal, twenty per cent of the actual cost of the machinery or plant to the assessee ; and

(*ii*) in any other case, ten per cent of the actual cost of the machinery or plant to the assessee.

Explanation.—In this rule, "actual cost" shall have the meaning assigned to it in clause (*1*) of section 43.]

[11][Guidelines, form and manner in respect of approval under clause (*ii*) and clause (*iii*) of sub-section (1) of section 35.

5C. (1) An application for approval,—

(*i*) under clause (*ii*) [12][or clause (*iii*)] of sub-section (1) of section 35 by a [13][***] research association in duplicate in Form No. 3CF-I;

(*ii*) under clause (*ii*) or clause (*iii*) of sub-section (1) of section 35 by a university, college or other institution in duplicate in Form No. 3CF-II,

shall be made, at any time during the financial year immediately preceding the assessment year from which the approval is sought, to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the applicant.

(2) Annexure to the application [in] Form No. 3CF-I shall be filled out if the association claims exemption under clause (*21*) of section 10 of the Income-tax Act.

(3) The applicant shall send a copy of the application in Form No. 3CF-I or, as the case may be, Form No. 3CF-II to Member (IT), Central Board of Direct Taxes accompanied by the acknowledgement receipt as evidence of having furnished the application form in duplicate in the office of the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case.

(4) The period of one year, as specified in the fourth proviso to sub-section (1) of section 35, before the expiry of which approval is to be granted or the application is to be rejected by the Central Government shall be reckoned from the end of the month in which the application form from the applicant for approval is received in the office of Member (IT), Central Board of Direct Taxes.

(5) If any defect is noticed in the application in Form No. 3CF-I or Form No. 3CF-II or if any relevant document is not attached thereto, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application form in his office.

(6) The applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on

11. Rules 5C to 5E inserted by the IT (Twelfth Amdt.) Rules, 2006, w.e.f. 30-10-2006.
12. Inserted by the IT (Fourth Amdt.) Rules, 2011, w.e.f. 5-4-2011.
13. Word "scientific" omitted, *ibid.*

an application made in this behalf may be extended, so however, that the total period for removal of deficiency does not exceed thirty days, and if the applicant fails to remove the deficiency within the period of thirty days so allowed, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax shall send his recommendation for treating the application as invalid to the Member (IT), Central Board of Direct Taxes.

(7) The Central Government, if satisfied, may pass an order treating the application as invalid.

(8) If the application form is complete in all respects, the Commissioner of Income-tax or, as the case may be, the Director of Income-tax, may make such inquiry as he may consider necessary regarding the genuineness of the activity of the association or university or college or other institution and send his recommendation to the Member (IT) for grant of approval or rejection of the application before the expiry of the period of three months to be reckoned from the end of the month in which the application form was received in his office.

(9) The Central Government may before granting approval under clause (*ii*) or clause (*iii*) shall call for such documents or information from the applicant as it may consider necessary and may get any inquiry made for verification of the genuineness of the activity of the applicant.

(10) The Central Government may, under sub-section (1) of section 35, issue the notification to be published in the Official Gazette granting approval to the association or university or college or other institution or for reasons to be recorded in writing reject the application.

(11) The Central Government may withdraw the approval granted under clause (*ii*) or clause (*iii*) of sub-section (1) of section 35 if it is satisfied that the [14][***] research association or university or college or other institution has ceased its activities or its activities are not genuine or are not being carried out in accordance with all or any of the conditions under rule 5D or rule 5E.

(12) No order treating the application as invalid or rejecting the application or withdrawing the approval, shall be passed without giving a reasonable opportunity of being heard to the [14][***] research association or university or college or other institution.

(13) A copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant, the Assessing Officer and the Commissioner of Income-tax or, as the case may be, the Director of Income-tax.

[15][Conditions subject to which approval is to be granted to a research association under clause (*ii*) or clause (*iii*) of sub-section (1) of section 35.

5D. (1) The sole object of the applicant research association shall be to undertake scientific research or research in social science or statistical research, as the case may be.

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14. Word "scientific" omitted by the IT (Fourth Amdt.) Rules, 2011, w.e.f. 5-4-2011.
15. Substituted, *ibid.* Earlier rule 5D was inserted by the IT (Twelfth Amdt.) Rules, 2006, w.e.f. 30-10-2006 and amended by the IT (Second Amdt.) Rules, 2009, w.e.f. 1-4-2009.

(2) The applicant research association shall carry on the research activity by itself.

(3) The research association seeking approval under clause (*ii*) or clause (*iii*) of sub-section (1) of section 35 shall maintain books of account and get such books audited by an accountant as defined in the *Explanation* to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.

(4) The research association shall maintain a separate statement of donations received and amount applied for scientific research or research in social science or statistical research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3).

(5) The research association shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing—

(*i*) a detailed note on the research work undertaken by it during the previous year;

(*ii*) a summary of research articles published in national or international journals during the year;

(*iii*) any patent or other similar rights applied for or registered during the year;

(*iv*) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme.

(6) If the Commissioner of Income-tax or the Director of Income-tax is satisfied that the research association,—

(*a*) is not maintaining books of account, or

(*b*) has failed to furnish its audit report, or

(*c*) has not furnished its statement of the sums received and the sums applied for scientific research or research in social science or statistical research or a statement referred to in sub-rule (5), or

(*d*) has ceased to carry on its research activities, or its activities are not genuine, or

(*e*) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries furnish a report on the circumstances referred to in clauses (*a*) to (*e*) above to the Central Government within six months from the date of furnishing the return of income under sub-section (1) of section 139.]

Conditions subject to which approval is to be granted to a University, College or other Institution under clause (*ii*) and clause (*iii*) of sub-section (1) of section 35.

5E. (1) The sum paid to a university, college or other institution shall be used for scientific research and research in social science or statistical research.

(2) The applicant university, college or other institution shall carry out scientific research, research in social science or statistical research through its faculty members or its enrolled students.

(3) A university or college or other institution approved under clause (*ii*) or clause (*iii*) of sub-section (1) of section 35 shall maintain separate books of account in respect of the sums received by it for scientific research or, as the case may be, for research in social science or statistical research, reflect therein the amount used

for carrying out research, get such books of account audited by an accountant, as defined in the *Explanation* to sub-section (2) of section 288 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.

(4) The university or college or other institution shall maintain a separate statement of donations received and the amount used for research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3).

[16][(4A) The university, college or other institution shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing—

(*i*) a detailed note on the research work undertaken by it during the previous year;

(*ii*) a summary of research articles published in national or international journals during the year;

(*iii*) any patent or other similar rights applied for or registered during the year;

(*iv*) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme.]

(5) If the Commissioner of Income-tax or the Director of Income-tax is satisfied that the university or college or other institution,—

(*a*) is not maintaining separate books of account for research activities, or

(*b*) has failed to furnish its audit report, or

(*c*) has not furnished its statement of the sums received and the sums used for research [16][or a statement referred to in sub-rule (4A)], or

(*d*) has ceased to carry on its research activities, or its activities are not genuine, or

(*e*) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries furnish a report on the circumstances referred to in clauses (*a*) to (*e*) above to the Central Government within six months from the date of furnishing the return of income under section 139(1).]

[17][**Prescribed authority, guidelines, form, manner and conditions for approval under clause (*iia*) of sub-section (1) of section 35.**

5F. (1) For the purposes of clause (*iia*) of sub-section (1) of section 35, the prescribed authority shall be the Chief Commissioner of Income-tax having jurisdiction over the applicant.

(2) Guidelines, form and manner in respect of approval under clause (*iia*) of sub-section (1) of section 35 shall be as under :—

(*a*) An application for approval under clause (*iia*) of sub-section (1) of section 35 by a company shall be made in duplicate in Form No. 3CF-III, to the Commissioner of Income-tax having jurisdiction over the applicant, at any time during the financial year immediately preceding the assessment year from which the approval is sought.

16. Inserted by the IT (Second Amdt.) Rules, 2009, w.e.f. 1-4-2009.

17. Inserted by the IT (Tenth Amdt.) Rules, 2008, w.e.f. 1-4-2009.

(*b*) The applicant shall send a copy of the application in Form No. 3CF-III to the prescribed authority, accompanied by the acknowledgement receipt as evidence of having furnished the application form in duplicate in the Office of the Commissioner of Income-tax having jurisdiction over the case.

(*c*) Every notification under clause (*iia*) of sub-section (1) of section 35 shall be issued or an order rejecting the application shall be passed within a period of twelve months from the end of the month in which the application was received in the Office of the Chief Commissioner of Income-tax.

(*d*) If any defect is noticed in the application in Form No. 3CF-III or if any relevant document is not attached thereto, the Commissioner of Income-tax shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application form in his office.

(*e*) The applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended, so however, that the total period for removal of deficiency does not exceed thirty days, and if the applicant fails to remove the deficiency within the period of thirty days so allowed, the Commissioner of Income-tax shall send his recommendation to the Chief Commissioner of Income-tax for treating the application as invalid.

(*f*) The Chief Commissioner of Income-tax may, after examining the recommendations referred to in clause (*e*), pass an order that the application is invalid.

(*g*) If the application form is complete in all respects, the Commissioner of Income-tax may, make such inquiry as he may consider necessary regarding the genuineness of the activity of the company and send his recommendation to the Chief Commissioner of Income-tax for grant of approval or rejection of the application before the expiry of the period of three months to be reckoned from the end of the month in which the application form was received in his office.

(*h*) The Chief Commissioner of Income-tax may, before granting approval under clause (*iia*) of sub-section (1) of section 35, call for such documents or information from the applicant as it considers necessary and may get any inquiry made for verification of the genuineness of the activity of the applicant.

(*i*) The Chief Commissioner of Income-tax may, under sub-section (1) of section 35, issue the notification to be published in the Official Gazette granting approval to the company or for reasons to be recorded in writing reject the application.

(*j*) The Chief Commissioner of Income-tax may withdraw the approval granted under clause (*iia*) of sub-section (1) of section 35 if he is satisfied that the company has ceased to carry on its activities or its activities are not genuine or are not being carried on in accordance with all or any of the conditions under this rule :

Provided that no order treating the application as invalid or rejecting the application or withdrawing the approval shall be passed without giving a reasonable opportunity of being heard to the company.

(*k*) A copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant, the Assessing Officer and the Commissioner of Income-tax.

(3) Approval to a company under clause (*iia*) of sub-section (1) of section 35 shall be subject to the following conditions, namely :—

(*a*) The sum paid to the company shall be used for scientific research;

(*b*) The applicant company shall carry on scientific research through its own employees using its own assets;

(*c*) A company approved under clause (*iia*) of sub-section (1) of section 35 shall maintain separate books of account in respect of the sums received by it for scientific research, reflect therein the amount used for carrying on research, get such books of account audited by an accountant, and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.

Explanation.—For the purpose of this clause "accountant" shall have the same meaning as assigned to it in *Explanation* to sub-section (2) of section 288 of the Act.

(*d*) The company shall maintain a separate statement of donations received and the amount used for research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3).

(*e*) Subsequent to approval, the company shall, every year, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax containing the following information, namely :—

(*i*) a detailed note on the research work undertaken by it during the previous year;

(*ii*) a summary of research articles published in national or international journals during the year;

(*iii*) any patents or other similar rights applied for or registered during the year;

(*iv*) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such subjects.

(*f*) If the Commissioner of Income-tax is satisfied that the company,—

(*i*) is not maintaining separate books of account for research activities, or

(*ii*) has failed to furnish its audit report, or

(*iii*) has not furnished its statement of the sums received and the sums used for research, or a statement referred to in sub-clause (*e*), or

(*iv*) has ceased to carry on its research activities, or its activities are not genuine, or

(*v*) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries, furnish a report on the circumstances referred to in sub-clauses (*i*) to (*v*) to the jurisdictional Chief Commissioner of Income-tax within six months from the date of furnishing the return of income under sub-section (1) of section 139.]

[18][**Option form for taxation of income from patent under section 115BBF.**

5G. (1) For the purposes of exercising the option for taxation of income by way of royalty in respect of a patent developed and registered in India, by an eligible assessee under section 115BBF, the eligible assessee shall furnish Form No. 3CEA duly verified in the manner indicated therein, and the same shall be furnished by the eligible assessee in the following manner, namely:—

(*i*) electronically under digital signature; or

(*ii*) electronically through electronic verification code.

(2) The form referred in sub-rule (1) shall be complete in all respects and furnished on or before the due date specified in *Explanation 2* below sub-section (1) of section 139 for furnishing the return of income for the relevant assessment year, in case the option is exercised for that assessment year.

(3) The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing and verification of the Form referred in sub-rule (1).]

[19][**Prescribed authority[20] for expenditure on scientific research.**

6. (1) For the purposes of [21][[22][clause (*i*) of] sub-section (1) and sub-section (2A) of] section 35, the prescribed authority shall be the Director General (Income-tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India.

[23][(1A) For the purposes of sub-section (2AA) of section 35, the prescribed authority shall be—

(*a*) in the case of a National Laboratory or a University or an Indian Institute of Technology, the head of the National Laboratory or the University or the Indian Institute of Technology, as the case may be; and

(*b*) in the case of a specified person, the Principal Scientific Adviser to the Government of India.]

[24][(1B) For the purposes of sub-section (2AB) of section 35, the prescribed authority shall be the Secretary, Department of Scientific and Industrial Research.]

(2) [25][***]]

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18. Inserted by the IT (Fifth Amdt.) Rules, 2017, w.e.f. 1-4-2017.
19. Substituted by the IT (Eighth Amdt.) Rules, 1989, w.e.f. 23-8-1989. Earlier, rule 6 was amended by the IT (Second Amdt.) Rules, 1971, IT (Fifth Amdt.) Rules, 1974, IT (Seventh Amdt.) Rules, 1977, IT (Sixth Amdt.) Rules, 1980, IT (Fourth Amdt.) Rules, 1982, w.e.f. 1-6-1982 and IT (Seventh Amdt.) Rules, 1985, w.e.f. 6-1-1985.
20. *See* section 295(2)(*g*).
21. Inserted by the IT (Ninth Amdt.) Rules, 1996, w.r.e.f. 1-10-1996.
22. Inserted by the IT (Twenty-second Amdt.) Rules, 1999, w.e.f. 25-6-1999.
23. Substituted by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001. Prior to its substitution, sub-rule (1A), as inserted by the IT (Ninth Amdt.) Rules, 1996, w.r.e.f. 1-10-1996, read as under :

"(1A) For the purposes of sub-section (2AA) of section 35, the prescribed authority shall be the head of the National Laboratory or the University or the Indian Institute of Technology, as the case may be."
24. Inserted by the IT (Fifth Amdt.) Rules, 1998, w.e.f. 1-4-1998.
25. Omitted by the IT (Twelfth Amdt.) Rules, 2006, w.e.f. 30-10-2006. Prior to omission, sub-rule (2) read as under:

"(2) The application required to be furnished by a scientific or industrial research organisation or institution under clause (*ii*) or (*iii*) of sub-section (1) of section 35 shall be in Form No. 3CF."

[26][(3) The application for obtaining approval under sub-section (2AA) of section 35 shall be made by a sponsor in Form No. 3CG.

Explanation.—For the purposes of this rule "sponsor" means a person who makes an application in Form No. 3CG.]

[27][(4) The application required to be furnished by a company under sub-section (2AB) of section 35 shall be in Form No. 3CK.[28]]

[29][(5) The head of the National Laboratory or the University or the Indian Institute of Technology [30][or the Principal Scientific Adviser to the Government of India] shall, if he is satisfied that it is feasible to carry out the scientific research programme then, subject to other conditions prescribed in this rule and section 35(2AA) of the Act, pass an order in writing in Form No. 3CH :

Provided *that a reasonable opportunity of being heard shall be granted to the sponsor before rejecting an application :

Provided further that an order under this rule shall be passed within two months of the receipt of the application under sub-rule (1A) :]

[31][**Provided also** that the Principal Scientific Adviser to the Government of India may authorise an officer who is not below the rank of a Deputy Secretary to issue such order, after the scientific research programme has been approved by him.]

[32][(5A) The prescribed authority shall, if he is satisfied that the conditions provided in this rule and in sub-section (2AB) of section 35 of the Act are fulfilled, pass an order in writing in Form No. 3CM[33]:

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26. Inserted by the IT (Sixteenth Amdt.) Rules, 1993, w.e.f. 15-9-1993.
27. Inserted by the IT (Fifth Amdt.) Rules, 1998, w.e.f. 1-4-1998. Earlier, sub-rule (4), as inserted by the IT (Sixteenth Amdt.) Rules, 1993, w.e.f. 15-9-1993 and later on omitted by the IT (Ninth Amdt.) Rules, 1996, w.r.e.f. 1-10-1996, read as under :
"(4) The Secretary, Department of Scientific and Industrial Research shall, within eight weeks of the receipt of an application in Form No. 3CG, communicate his decision on each application to the Director General (Income-tax Exemptions)."
28. In *PCP Chemicals (P.) Ltd.* v. *ITO* [2017] 88 taxmann.com 5/168 ITD 26 (Mum. - Trib.) it was held that in order to claim weighted deduction under section 35(2AB), approval of R&D facility by competent authority in prescribed format is mandatory.
In that case as per certificate issued by the competent authority in Form 3CM, the assessee's R&D facility had been approved for period from 1-4-2011 to 31-3-2013 on basis of application filed by the assessee in prescribed Form 3CK on 12-8-2011. It was held that the assessee was not entitled for weighted deduction towards its R&D expenditure for the assessment year 2011-12. For details, *see* Taxmann's Master Guide to Income-tax Rules.
29. Substituted by the IT (Ninth Amdt.) Rules, 1996, w.r.e.f. 1-10-1996. Prior to its substitution, sub-rule (5), as inserted by the IT (Sixteenth Amdt.) Rules, 1993, w.e.f. 15-9-1993, read as under :
"(5) The Director General (Income-tax Exemptions) shall within four weeks of the receipt of the decision conveyed by the Secretary, Department of Scientific and Industrial Research, issue an order of approval of programme in Form No. 3CH."
30. Inserted by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001.
31. Inserted by the IT (Twelfth Amdt.) Rules, 2004, w.e.f. 25-10-2004.
32. Inserted by the IT (Fifth Amdt.) Rules, 1998, w.e.f. 1-4-1998.
33. In *Minilec India (P.) Ltd.* v. *Asstt. CIT* [2018] 93 taxmann.com 213/171 ITD 124 (Pune - Trib.) it was held that if recognition to facility given by prescribed authority which is mandate of section 35(2AB) is maintained, assessee has to be accorded deduction under section 35(2AB); non-receipt of Form No. 3CM is at best a procedural lapse and is not fatal for denial of claim of deduction under section 35(2AB). For details, *see* Taxmann's Master Guide to Income-tax Rules.

*"that" is provided by Editor.

Provided that a reasonable opportunity of being heard shall be granted to the company before rejecting an application.]

[34][* * *]

[35][(6) The National Laboratory, [36][University, Indian Institute of Technology or specified person] shall issue a receipt of payment for carrying out an approved programme of scientific research under sub-section (2AA) in Form No. 3CI.]

[37][(7) Approval of a programme under sub-section (2AA) shall be subject to the following conditions :—

(*a*) The programme should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;

(*b*) The prescribed authority shall submit its report to the [38][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor] in Form No. 3CJ within a period of three months from the date of granting approval to the programme:

[39][**Provided** that the officer authorised by the prescribed authority, being the Principal Scientific Adviser to the Government of India, under sub-rule (5) shall submit such report to the [38][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor];]

(*c*) The sponsor and the National Laboratory, [40][University, Indian Institute of Technology or specified person], as the case may be, shall submit to the [38][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor] a yearly statement showing progress of implementation of the approved programme and actuals of expenditure incurred thereon;

(*d*) The prescribed authority shall not extend the duration of the programme or approve any escalation in costs;

(*e*) The National Laboratory, [40][University, Indian Institute of Technology or specified person], as the case may be, shall maintain a separate

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34. Second proviso omitted by the IT (Twenty-sixth Amdt.) Rules, 1999, w.e.f. 5-7-1999. Prior to its omission, second proviso, as inserted by the IT (Fifth Amdt.) Rules, 1998, w.e.f. 1-4-1998, read as under :
"**Provided further** that an order under this rule shall be passed within two months of the receipt of application under sub-rule (4)."
35. Inserted by the IT (Sixteenth Amdt.) Rules, 1993, w.e.f. 15-9-1993.
36. Substituted for "University or Indian Institute of Technology" by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001. Earlier, the quoted words were inserted by the IT (Eleventh Amdt.) Rules, 1994, w.e.f. 23-11-1994.
37. Substituted by the IT (Ninth Amdt.) Rules, 1996, w.r.e.f. 1-10-1996. Prior to its substitution, sub-rule (7) was inserted by the IT (Sixteenth Amdt.) Rules, 1993, w.e.f. 15-9-1993 and later amended by the IT (Eleventh Amdt.) Rules, 1994, w.e.f. 23-11-1994.
38. Substituted for "Director General (Income-tax Exemptions)" by the IT (Tenth Amdt.) Rules, 2016, w.e.f. 1-7-2016.
39. Inserted by the IT (Twelfth Amdt.) Rules, 2004, w.e.f. 25-10-2004.
40. Substituted for "University or Indian Institute of Technology" by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001.

account for each approved programme; which shall be audited annually and a copy thereof shall be furnished to the [41][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor] by 31st day of October of each succeeding year;

(*f*) Assets acquired by the prescribed authority for executing the approved programme shall not be disposed of without the approval of the [41][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor];

(*g*) On completion of the approved programme, a completion certificate along with a copy of the report on the research activities carried out and salient features of the result obtained and its further application for commercial exploitation shall be jointly submitted by the sponsor and the National Laboratory, [42][University, Indian Institute of Technology or specified person] to the [41][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor];

(*h*) A copy of the audited statement of accounts for the approved programme shall be submitted by the Head of the National Laboratory, University or Indian Institute of Technology [43][or the Principal Scientific Adviser to the Government of India] to the [41][Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the sponsor] within six months of the completion of the programme.]

[44][(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely :—

(*a*) The facility should not relate purely to market research, sales promotion, quality control, testing, commercial production, style changes, routine data collection or activities of a like nature;

[45][(*b*) The prescribed authority shall furnish electronically its report,—

(*i*) in relation to the approval of in-house research and development facility in Part A of Form No. 3CL;

41. Substituted for "Director General (Income-tax Exemptions)" by the IT (Tenth Amdt.) Rules, 2016, w.e.f. 1-7-2016.
42. Substituted for "University or Indian Institute of Technology" by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001.
43. Inserted by the IT (Eighteenth Amdt.) Rules, 2001, w.e.f. 8-8-2001.
44. Inserted by the IT (Fifth Amdt.) Rules, 1998, w.e.f. 1-4-1998.
45. Substituted by the IT (Tenth Amdt.) Rules, 2016, w.e.f. 1-7-2016. Prior to its substitution, clause (*b*) read as under :

"(*b*) The prescribed authority shall submit its report in relation to the approval of in-house Research and Development facility in Form No. 3CL to the Director General (Income-tax Exemptions) within sixty days of its granting approval;"

(*ii*) quantifying the expenditure incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No. 3CL;

(*ba*) The report in Form No. 3CL referred to in clause (*b*) shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company within one hundred and twenty days[46],—

(*i*) of the grant of the approval, in a case referred to in sub-clause (*i*) of clause (*b*);

(*ii*) of the submission of the audit report, in a case referred to in sub-clause (*ii*) of clause (*b*);]

(*c*) The company shall maintain a separate account for each approved facility; which shall be audited annually and [47][a report of audit in Form No. 3CLA shall be furnished electronically to the Secretary, Department of Scientific and Industrial Research on or before the due date specified in *Explanation* 2 to sub-section (1) of section 139 of the Act for furnishing the return of income, for each succeeding year].

Explanation: For the purposes of this sub-rule the expression "audited" means the audit of accounts by an accountant, as defined in the *Explanation* below sub-section (2) of section 288 of the Income-tax Act, 1961;

(*d*) Assets acquired in respect of development of scientific research and development facility shall not be disposed of without the approval of the Secretary, Department of Scientific and Industrial Research.]

[48][(8) For the purposes of this rule, the Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified.]

[49][**Expenditure for obtaining right to use spectrum for telecommunication services.**

6A. (1) For the purpose of section 35ABA, the term "payment has actually been made" shall mean,—

(*a*) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make full upfront pay-

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46. In *CIT* v. *Sun Pharmaceutical Industries Ltd.* [2017] 85 taxmann.com 80/250 Taxman 270 (Guj.) it was held that where assessee, engaged in research and development of pharmaceutical products, claimed deduction under section 35(2AB), in view of fact that research and development facility had been approved by prescribed authority in proper format, i.e., Form 3CM, merely because said authority failed to send intimation to department in Form 3CL, it would not be reason enough to deprive assessee's claim of deduction. For details, see Taxmann's Master Guide to Income-tax Rules.

47. Substituted for "a copy thereof shall be furnished to the Secretary, Department of Scientific and Industrial Research by 31st day of October of each succeeding year" by the IT (Tenth Amdt.) Rules, 2016, w.e.f. 1-7-2016.

48. Inserted by the IT (Tenth Amdt.) Rules, 2016, w.e.f. 1-7-2016.

49. Inserted by the IT (Twenty-fourth Amdt.) Rules, 2016, w.e.f. 4-10-2016. Earlier, rule 6A was inserted by the IT (Third Amdt.) Rules, 1970 and later on amended by the IT (Seventh Amdt.) Rules, 1977, w.e.f. 1-11-1977 and omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.

ment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;

(*b*) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

(2) In case of deferred payment referred to in clause (*b*) of sub-rule (1), where there is failure by the assessee to comply with any of the conditions specified by the scheme of the Department of Telecommunications, Government of India and Department of Telecommunications terminates the allotment or assignment of spectrum, the Assessing Officer shall, in exercise of power vested in him under sub-section (3) of section 35ABA shall re-compute the total income of the assessee for the previous year in which the deduction has been claimed and granted to him by deeming that,—

(*i*) the total amount of spectrum fee paid up to the date of termination is the amount of "payment actually been made";

(*ii*) the spectrum was in force up to the date of its termination for the purpose of computing "relevant previous year".]

Prescribed activities for export markets development allowance.

[50]**6AA.** [*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

[51][[52]**Prescribed authority for the purposes of sections 35CC[53] and 35CCA[54].**

[55][**6AAA.**] For the purposes of section 35CC and section 35CCA,—

50. Prior to its omission, rule 6AA, as inserted by the IT (Eighth Amdt.) Rules, 1981, w.e.f. 1-8-1981 and later on amended by the IT (Third Amdt.) Rules, 1982, w.e.f. 27-5-1982.

51. Substituted by the IT (Third Amdt.) Rules, 1979, w.e.f. 1-6-1979. Original rule was inserted as rule 6AA by the IT (Fourth Amdt.) Rules, 1977, w.e.f. 1-9-1977 and later substituted by the IT (Sixth Amdt.) Rules, 1978, w.e.f. 1-6-1978.

52. *See* section 295(2)(g).

53. Section 35CC has since been omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

54. *Notified income-tax authorities :* In exercise of the powers conferred by section 35CCA of the Income-tax Act, 1961 read with rule 6AAA of the Income-tax Rules, 1962, the Central Board of Direct Taxes empowers the income-tax authorities specified in column number (2) of the Schedule hereto annexed to be the Chairman of the Committee for the purposes of section 35CCA for the States/Union Territories specified in column number (3) of the said Schedule :

SCHEDULE

Serial No.	*Income-tax authorities*	*State/Union Territory*
(1)	*(2)*	*(3)*
1.	Chief Commissioner of Income-tax, Kolkata-I	West Bengal
2.	Chief Commissioner of Income-tax, Delhi-I	Delhi
3.	Chief Commissioner of Income-tax, Chandigarh	Punjab
4.	Chief Commissioner of Income-tax, Jaipur	Rajasthan

(Contd. on p. 1.82)

(*i*) the "prescribed authority" to approve the programme of rural development referred to in sub-section (1) of section 35CC and in clause (*a*) of sub-section (1) of section 35CCA shall be the Committee consisting of the following, namely :—

(*a*) The [56][Chief Commissioner or Commissioner] of Income-tax who exercises jurisdiction over the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out—*Chairman*;

(*b*) An officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out—*Member*;

(*ii*) the "prescribed authority" to approve an association or institution referred to in clause (*a*) or clause (*b*) of sub-section (1) of section 35CCA shall be the Committee consisting of the following, namely :—

(*a*) The [56][Chief Commissioner or Commissioner] of Income-tax, who exercises jurisdiction over the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated—*Chairman*;

(*b*) An officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated—*Member*:

Provided that where in a case whether falling under clause (*i*) or clause (*ii*) two or more Commissioners exercise jurisdiction over the State or, as the case may be, the Union territory, the Board may, by notification in the Official Gazette, empower the [56][Chief Commissioner or Commissioner] specified in this behalf to be the Chairman of the Committee.

Explanation.—In this rule, "programme of rural development" shall have the meaning assigned to it in the *Explanation* to sub-section (1) of section 35CC of the Income-tax Act.]

(*Contd. from p. 1.81*)

(1)	(2)	(3)
5.	Chief Commissioner of Income-tax, Ahmedabad-I	Gujarat
6.	Chief Commissioner of Income-tax, Mumbai-I	Maharashtra
7.	Chief Commissioner of Income-tax, Bangalore-I	Karnataka
8.	Chief Commissioner of Income-tax, Thiruvananthapuram	Kerala
9.	Chief Commissioner of Income-tax, Hyderabad-I	Andhra Pradesh
10.	Chief Commissioner of Income-tax, Chennai-I	Tamil Nadu
11.	Chief Commissioner of Income-tax, Bhopal	Madhya Pradesh
12.	Chief Commissioner of Income-tax, Lucknow-I	Uttar Pradesh
13.	Chief Commissioner of Income-tax, Guwahati	Assam - *Notification No. SO 195(E), dated 11-2-2005.*

55. Renumbered by the IT (Eighth Amdt.) Rules, 1981, w.e.f. 1-8-1981.
56. Substituted for "Commissioner" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.

Statement of expenditure for claiming deduction under section 35CC.

[57]**6AAB.** [*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

[58][59]**Prescribed authority for the purposes of section 35CCB.**

6AAC. For the purposes of section 35CCB, the "prescribed authority" shall be the Secretary, Department of Environment, Government of India.]

[60][61]**Guidelines for approval of agricultural extension project under section 35CCC.**

6AAD. (1) The agricultural extension project shall be considered for notification if it fulfils all of the following conditions, namely :—

(*i*) the project shall be undertaken by an assessee for training, education and guidance of farmers;

(*ii*) the project shall have prior approval of the Ministry of Agriculture, Government of India; and

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57. Prior to its omission, rule 6AAB, as inserted by the IT (Amdt.) Rules, 1978 and later on amended by the IT (Sixth Amdt.) Rules, 1986, w.e.f. 1-4-1987, read as under :
"6AAB. *Statement of expenditure for claiming deduction under section 35CC.*—The statement of expenditure required to be furnished under sub-section (3) of section 35CC shall be in Form No. 3AB."

58. Inserted by the IT (Sixth Amdt.) Rules, 1982, w.e.f. 26-6-1982.

59. *See* section 295(2)(*g*).

60. Rules 6AAD and 6AAE inserted by the IT (Fourth Amdt.) Rules, 2013, w.e.f. 30-5-2013.

61. Substituted by the IT (Third Amdt.) Rules, 2014, w.e.f. 21-3-2014. Prior to its substitution, rule 6AAD read as under :
"6AAD. *Guidelines for approval of agricultural extension project under section 35CCC.*—(1) The agricultural extension project shall be considered for notification if it fulfils all of the following conditions namely:—
(*i*) the project shall be undertaken by an assessee for training, education and guidance of farmers;
(*ii*) the project shall have prior approval of the Ministry of Agriculture, Government of India; and
(*iii*) the expenditure (not being expenditure in the nature of cost of any land or building) exceeding an amount of twenty-five lakh rupees is expected to be incurred for the project.
(2) An assessee, before undertaking any agricultural extension project, shall make an application for notification of such project under sub-section (1) of section 35CCC, in duplicate, in Form No. 3C-O, to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the assessee.
(3) The assessee shall also send a copy of the application in Form No. 3C-O to the Member (IT), Central Board of Direct Taxes (hereinafter referred to as the CBDT) accompanied by the acknowledgement receipt, as evidence of having furnished the application form in duplicate, in the office of the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case.
(4) The application shall be accompanied by the following, namely :—
(*a*) a detailed note on the agricultural extension project to be undertaken by the assessee;
(*b*) details of the expenditure expected to be incurred on the project and expected date of completion of the project; and

(Contd. on p. 1.84)

(*iii*) an expenditure (not being expenditure in the nature of cost of any land or building) exceeding the amount of twenty-five lakh rupees is expected to be incurred for the project.

(2) Before undertaking any agricultural extension project, an assessee shall make an application in Form No. 3C-O to the Member (IT), Central Board of Direct Taxes for notification of such project under sub-section (1) of section 35CCC.

(3) The application referred to in sub-rule (2) shall be accompanied by the following, namely :—

(*a*) a detailed note on the agricultural extension project to be undertaken by the assessee;

(Contd. from p. 1.83)

(*c*) a letter approving the project and specifying the amount of expenditure expected to be incurred on the project from the Ministry of Agriculture, Government of India.

(5) If any defect is noticed in the application referred to in sub-rule (2) or if any relevant document is not attached thereto, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, shall, before the expiry of one month from the date of receipt of the application in his office, intimate the defect to the applicant for its rectification.

(6) The applicant shall remove the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, as may be extended by the Commissioner of Income-tax or the Director of Income-tax, as the case may be, so however, that the total period for removal of defect does not exceed thirty days, and if the applicant fails to remove the defect within such period so allowed, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, shall send his recommendation for treating the application as invalid to the CBDT.

(7) On receipt of recommendation of the Commissioner of Income-tax or the Director of Income-tax, as the case may be, under sub-rule (6), the CBDT, if satisfied, may pass an order treating the application as invalid.

(8) If the application form is complete in all respects, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, may make such inquiry or call for such documents from the assessee as he may consider necessary for satisfying himself regarding the genuineness of the current and proposed activities of the assessee, and send his recommendation to the CBDT for grant of approval or rejection of the application before the expiry of the period of two months to be reckoned from the end of the month in which the application form complete in all respects was received in his office.

(9) The CBDT may, before notifying an agricultural extension project under section 35CCC, call for such documents from the assessee, as it considers necessary, and may also get any inquiry made for verification of the genuineness of the activities of the assessee.

(10) The CBDT may, within a period of three months from the end of the month in which it receives the report referred to in sub-rule (8) from the Commissioner of Income-tax or the Director of Income-tax, as the case may be, under sub-section (1) of section 35CCC, issue a notification in Form No. 3CP to be published in the Official Gazette specifying the agricultural extension project subject to conditions mentioned in rule 6AAE or such other conditions, as it may deem fit, to be effective for such period not exceeding three assessment years or pass an order rejecting the application.

(11) If the CBDT is satisfied with the activities of the agricultural extension project during the period of notification, it may notify the said project for a further period.

(12) A copy of the notification issued under sub-rule (10) or sub-rule (11) shall be sent to the applicant, Ministry of Agriculture, Government of India, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, the Department of Agriculture of the concerned State, and the Agricultural Technology Management Agency (ATMA) of the concerned District(s).

(Contd. on p. 1.85)

(*b*) details of the expenditure expected to be incurred on the project and expected date of completion of the project; and

(*c*) a letter approving the project and specifying the amount of expenditure expected to be incurred on the project from the Ministry of Agriculture, Government of India.

(4) Where any defect is noticed in the application referred to in sub-rule (2) or a relevant document is not attached thereto, the Central Board of Direct Taxes shall, before the expiry of one month from the date of receipt of the application in its office, intimate the defect to the applicant for its rectification.

(5) The applicant shall remove the defect within a period of fifteen days from the date of such intimation or within such further period as may be extended by the Central Board of Direct Taxes, on an application made in this behalf by the applicant, so however, that the total period for removal of defect does not exceed thirty days, and if the applicant fails to remove the defect within such period as allowed, the Central Board of Direct Taxes shall pass an order treating the application as invalid.

(6) If the application form is complete in all respects, the Central Board of Direct Taxes shall, within a period of one month from the end of the month in which it receives the application form complete in all respects, issue under sub-section (1) of section 35CCC, a notification in Form No. 3CP to be published in Official Gazette[62] specifying the agricultural extension project, subject to the conditions mentioned in rule 6AAE or such other conditions, as it may deem fit, to be effective for such period not exceeding three assessment years.

(7) The assessee, may, at least two months before the expiry of the effective period of the notification issued under sub-rule (6), make an application to the Central Board of Direct Taxes for notification of such project for a further period.

(8) The Central Board of Direct Taxes shall, after receiving the application under sub-rule (7), call for a report from the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case regarding the activities of the agricultural extension project during the period of notification and fulfilment of conditions mentioned in rule 6AAE and any other conditions subject to which the agricultural extension project was notified under sub-rule (6).

(9) On being satisfied with the report received under sub-rule (8) on the agricultural extension project, the Central Board of Direct Taxes may, within a period of three

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(Contd. from p. 1.84)

(13) The CBDT may rescind the notification issued under sub-rule (10) or sub-rule (11) at any time, if it is satisfied that the assessee has ceased its activities or its activities are not genuine or are not being carried out in accordance with all or any of the relevant provisions of the Act or this rule or rule 6AAE or are not being carried out in accordance with all or any of the conditions subject to which the notification was issued.

(14) An order treating the application as invalid or rejecting or rescinding the notification shall not be passed unless the assessee has been given an opportunity of being heard in the matter.

(15) A copy of any order invalidating or rejecting the application or rescinding the notification shall be sent to the applicant, Ministry of Agriculture, Government of India, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, the Department of Agriculture of the concerned State, and the Agricultural Technology Management Agency (ATMA) of the concerned District(s)."

62. *See* notified projects, *see* Taxmann's Master Guide to Income-tax Rules.

months from the end of the month in which it receives application referred to in sub-rule (7), notify the said project for a further period not exceeding three assessment years.

(10) A copy of the notification issued under sub-rule (6) or, as the case may be, under sub-rule (9) shall be sent to the applicant, the Ministry of Agriculture, Government of India, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, the Department of Agriculture of the concerned State and the Agricultural Technology Management Agency of the concerned District.

(11) The Central Board of Direct Taxes may, on being satisfied that the assessee has ceased its activities, or that its activities are not genuine or that its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or this rule or rule 6AAE, or its activities are not being carried out in accordance with all or any of the conditions subject to which the notification was issued, pass an order for rescission of the notification issued under sub-rule (6) or sub-rule (9).

(12) Before any order is passed treating the application as invalid or rejecting it or rescinding the notification, an opportunity of being heard in the matter shall be given to the assessee.

(13) A copy of the order invalidating or rejecting the application or rescinding the notification shall be sent to the applicant, the Ministry of Agriculture, Government of India, the Commissioner of Income-tax or the Director of Income-tax, as the case may be, the Department of Agriculture of the concerned State and Agricultural Technology Management Agency of the concerned district.]

Conditions subject to which an agricultural extension project is to be notified under section 35CCC.

6AAE. (1) The assessee undertaking agricultural extension project shall maintain separate books of account of the agricultural extension project notified under sub-section (1) of section 35CCC, and get such books of account audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288.

(2) The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfilment of the conditions specified in the relevant provisions of the Act or the rules or the conditions mentioned in the [63][notification issued under sub-rule (6) or suh-rule (9) of rule 6AAD].

(3) The assessee shall not accept an amount exceeding the amount as approved in the notification from the beneficiary under the eligible agricultural extension project for training, education, guidance or any material distributed for the purposes of such training, education or guidance.

63. Substituted for "notification issued under sub-rule (10) or sub-rule (11) of rule 6AAD" by the IT (Third Amdt.) Rules, 2014, w.e.f. 21-3-2014.

(4) The assessee shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act, rule 6AAD and this rule.

(5) All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC :

Provided that any expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.

(6) The assessee shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the following to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, namely:—

(*a*) the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCC;

(*b*) a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and

(*c*) a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.

(7) If the Commissioner of Income-tax or the Director of Income-tax, as the case may be, is satisfied that the,—

(*a*) assessee has not maintained separate books of account for the agricultural extension project or has not got such books of account audited by an accountant in accordance with sub-rule (1);

(*b*) assessee has not furnished the documents referred to in sub-rule (6);

(*c*) assessee has ceased to carry out activities of agricultural extension project;

(*d*) activities of agricultural extension project of the assessee are not genuine; or

(*e*) activities of the agricultural extension project are not being carried out in accordance with the relevant provisions of the Act or the rules or the conditions subject to which the notification was issued,

he may, after making appropriate inquires*, furnish a report on the circumstances referred to in clauses (*a*) to (*e*) to the CBDT [64][for appropriate action as per the provisions of sub-rule (11) of rule 6AAD].]

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64. Substituted for "for appropriate action as per the provisions of sub-rule (13) of rule 6AAD" by the IT (Third Amdt.) Rules, 2014, w.e.f. 21-3-2014.

*Be read as 'enquiries'.

[65][Guidelines for approval of skill development project under section 35CCD.

6AAF. (1) A skill development project shall be considered for notification if it is undertaken by an eligible company and the project is undertaken in separate facilities in a training institute.

(2) The eligible company, before undertaking any skill development project, shall make an application for notification of such project under sub-section (1) of section 35CCD, in duplicate, in Form No. 3CQ, to the National Skill Development Agency (hereinafter referred to as the NSDA).

(3) The eligible company shall also send a copy of the application in Form No. 3CQ to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case, accompanied by the acknowledgement receipt as evidence of having furnished the application form in duplicate to the NSDA.

(4) The application shall be accompanied by the following, namely :—

(*a*) detailed note on the skill development project to be undertaken by the eligible company;

(*b*) details of the expenditure expected to be incurred on the project and expected date of completion of the project; and

(*c*) a letter of concurrence from the training institute in which the skill development project is to be undertaken.

(5) If any defect is noticed in the application referred to in sub-rule (2) or if any relevant document is not attached thereto, the NSDA shall, before the expiry of one month from the date of receipt of the application in its office, intimate the defect to the applicant for its rectification.

(6) The applicant shall remove the defect within a period of fifteen days from the date of such intimation or within such further period as, on an application made in this behalf, may be extended by the NSDA, so however, that the total period for removal of the defect does not exceed thirty days, and if the applicant fails to remove the defect within such period so allowed, the NSDA shall send its recommendation for treating the application as invalid to the CBDT.

(7) On receipt of recommendation of the NSDA under sub-rule (6), the CBDT, if satisfied, may pass an order treating the application as invalid.

(8) If the application form is complete in all respects, the NSDA may make such inquiry or call for such documents from the eligible company or the training institute as it may consider necessary for satisfying itself regarding the genuineness of the current and proposed activity of the applicant and send its recommendation to the CBDT for grant of approval or rejection of the application before the expiry of the period of two months to be reckoned from the end of the month in which the application form complete in all respects was received in its office.

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65. Rules 6AAF, 6AAG and 6AAH inserted by the IT (Tenth Amdt.) Rules, 2013, w.e.f. 15-7-2013.

(9) The Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case shall send his recommendation to the NSDA for grant of approval or rejection of the application, after considering the compliance of the applicant with the various provisions of Income-tax Act, 1961 and Wealth-tax Act, 1957, before the expiry of the period of one month to be reckoned from the end of the month in which the copy of the application was received in his office.

(10) If the NSDA recommends the grant of approval under sub-rule (8), the CBDT shall, within a period of fifteen days from the end of the month in which it receives the report from the NSDA, under sub-section (1) of section 35CCD, issue a notification in Form No. 3CR to be published in the Official Gazette specifying the skill development project subject to conditions mentioned in rule 6AAG or such other conditions, as it may deem fit, to be effective for such period not exceeding three assessment years and if the NSDA recommends the rejection of the application under sub-rule (8), the CBDT shall pass an order rejecting the application.

(11) If the CBDT is satisfied with the activities of the skill development project during the period of notification, it may notify the said project for a further period in consultation with the NSDA.

(12) A copy of the notification issued under sub-rule (10) or sub-rule (11) shall be sent to the applicant, the NSDA, the training institute and the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case.

(13) The CBDT may rescind the notification issued under sub-rule (10) or sub-rule (11) at any time, if it is satisfied that the eligible company or the training institute, as the case may be, has ceased its activities or its activities are not genuine or the activities of the skill development project are not being carried out in accordance with all or any of the relevant provisions of the Act or this rule or rule 6AAG or the conditions subject to which the notification was issued.

(14) An order rescinding the notification shall not be passed unless the applicant has been given an opportunity of being heard in the matter.

(15) A copy of any order invalidating or rejecting the application or rescinding the notification shall be sent to the applicant, the training institute, the NSDA and the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case.

Conditions subject to which a skill development project is to be notified under section 35CCD.

6AAG. (1) The company undertaking skill development project shall maintain separate books of account of the skill development project notified under sub-section (1) of section 35CCD, and get such books of account audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288.

(2) The audit report referred to in sub-rule (1) shall include the comments of the auditor on the true and fair view of the books of account maintained for skill development project, the genuineness of the activities of the skill development project and fulfilment of the conditions specified in the relevant provisions of the

Act or the rules or the conditions mentioned in the notification issued under sub-rule (10) or sub-rule (11) of rule 6AAF.

(3) A skill development project in respect of existing employees of the company shall not be eligible for notification under sub-section (1) of section 35CCD, where the training of such employees commences after six months of their recruitment.

(4) All expenses (not being expenditure in the nature of cost of any land or building), incurred wholly and exclusively for undertaking a notified skill development project shall be eligible for deduction under section 35CCD :

Provided that any expenditure incurred on the skill development project which is reimbursed or reimbursable to the company by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCD.

(5) The company shall, on or before the due date of furnishing the return of income under sub-section (1) of section 139, furnish the audited statement of accounts of the skill development project for the previous year along with the audit report and amount of deduction claimed under sub-section (1) of section 35CCD to the Commissioner of Income-tax or the Director of Income-tax, as the case may be.

(6) If the Commissioner of Income-tax or the Director of Income-tax, as the case may be, is satisfied that the,—

(*a*) company has not maintained separate books of account for the skill development project or has not got such books of account audited by an accountant in accordance with sub-rule (1);

(*b*) company has not furnished the documents referred to in sub-rule (5);

(*c*) company has ceased to carry out activities of skill development project;

(*d*) activities of skill development project of the company are not genuine; or

(*e*) activities of the skill development project of the company are not being carried out in accordance with the relevant provisions of the Act or the rules or the conditions subject to which the notification was issued,

he shall, after making appropriate inquiries, furnish a report on the circumstances referred to in clauses (*a*) to (*e*) to the CBDT for appropriate action under sub-rule (13) of rule 6AAF.

(7) If the NSDA is not satisfied about the genuineness of the activities of the notified skill development project, the NSDA shall send its recommendation to the CBDT for appropriate action under sub-rule (13) of rule 6AAF.

Meaning of expressions used in rule 6AAF and rule 6AAG.

6AAH. For the purposes of rule 6AAF and rule 6AAG—

(*i*) "Eligible company" means a company, which is—

(*a*) engaged in the business of manufacture or production of any article or thing, not being an article or thing mentioned at serial number 1 and serial number 2 of the list of articles or things specified in the Eleventh Schedule; or

(*b*) engaged in providing services mentioned in column (2) of the Table below:

TABLE

S.No.	Particulars
(1)	(2)
1.	Accounting services
2.	Architect services
3.	Automobile repair or maintenance
4.	Banking, insurance and financial services including ATM installation, maintenance and operations or banking correspondents or insurance agents
5.	Beauty and cosmetology, including hair styling or manicurists or pedicurists
6.	Cable operators or Direct To Home (DTH) services
7.	Cargo Handling and stevedoring services
8.	Construction including painting or woodwork or plumbing or flooring or electrical wiring or installation or maintenance of lifts
9.	Courier services
10.	Design services including fashion or gems and jewellery or apparel or industrial designing
11.	Event management
12.	Facilities management, housekeeping, cleaning services
13.	Fire and safety services
14.	Food processing or preservation services, including post harvesting and post farm-gate skills
15.	Health and Wellness services including spa or nutritionists or weight management or health instructors or yoga or gym trainers
16.	Home decor services, landscaping
17.	Hospital and Healthcare services, such as Lab technicians, nursing and other paramedical staff
18.	Hospitality, including culinary skills or catering services
19.	Logistics and Transportation by any mode, including by air, sea, road, rail or pipelines, and related services such as driving or operation of heavy machinery equipment, forwarding agents, packers and movers
20.	Market research services
21.	Media or film or advertising
22.	Mining and extraction of mineral resources, including hydrocarbons
23.	Packaging and Warehousing, including both ambient temperature storage and cold storage, operation of Internal Container Depots and Container Freight Stations
24.	Port and maritime services such as dredging, piloting, tug boat operations, shipbuilding, ship scrapping, bunkering
25.	Power Sector Services, including those required for erection or installation or maintenance of equipment or towers, etc. in generation, transmission or distribution sector projects
26.	Private Security, including guards, supervisors, installation and maintenance of security equipment etc.
27.	Refrigeration and air-conditioning
28.	Repair and maintenance services, including Installation and servicing of household goods or white goods

S.No.	Particulars
(1)	(2)
29.	Retail marketing, including shop floor assistants or merchandisers
30.	Telecom services, including erection and maintenance of towers
31.	Travel and tourism, including guides or ticketing or sales or cab drives

[66][(*ii*) "Training institute" means a training institute,—

(*a*) set up by the Central Government or a State Government or a local authority;

(*b*) affiliated to the National Council for Vocational Training or a State Council for Vocational Training;

(*c*) affiliated to, or approved by, or empanelled by, the National Skill Development Agency;

(*d*) affiliated to, or approved by, or empanelled by, the Central Government and certified by the National Council for Vocational Training as having training standards equivalent to training institutes affiliated to the National Council for Vocational Training; or

(*e*) affiliated to, or approved by or empanelled by, the State Government and certified by the National Council for Vocational Training or a State Council for Vocational Training as having training standards equivalent to training institutes affiliated to the National Council for Vocational Training or, as the case may be, the State Council for Vocational Training.]

(*iii*) "National Council for Vocational Training" means the National Council for Training in Vocational Trades established by the resolution of the Government of India in the Ministry of Labour (Directorate General of Resettlement and Employment) No. TR/E.P.-24/56, dated the 21st August, 1956 and re-named as the National Council for Vocational Training by the resolution of the Government of India in the Ministry of Labour (Directorate General of Employment and Training) No. DGET/12/21/80-TC, dated the 30th September, 1981.

(*iv*) "State Council for Vocational Training" means a State Council for Training in Vocational Trades established by the State Government.]

[67][(*v*) "National Skill Development Agency" means the agency constituted by the Government of India *vide* notification No. 14/27/2012-EC, dated the 6th June, 2013.]

[68][**Form of audit report for claiming deductions under sections 35D and 35E.**

6AB. The report of audit of the accounts of an assessee, other than a company or a co-operative society, which is required to be furnished under sub-

66. Substituted by the IT (Second Amendment) Rules, 2014, w.e.f. 20-3-2014. Prior to its substitution, clause (*ii*) read as under :

'(*ii*) "Training institute" means a training institute set up by the Central or State Government or a local authority or a training institute affiliated to National Council for Vocational Training or State Council for Vocational Training.'

67. Inserted by the IT (Second Amendment) Rules, 2014, w.e.f. 20-3-2014.

68. Inserted by the IT (Amdt.) Rules, 1972, w.r.e.f. 1-4-1971 as rule 6AA and later renumbered as rule 6AB by the IT (Fourth Amdt.) Rules, 1977, w.e.f. 1-9-1977.

section (4) of section 35D or sub-section (6) of section 35E shall be in Form No. [69][3AE].]

[70][Computation of aggregate average advances for the purposes of clause (*viia*) of sub-section (1) of section 36.

6ABA. For the purposes of clause (*viia*) of sub-section (1) of section 36, the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely :—

(*a*) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;

(*b*) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (*a*);

(*c*) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.

Explanation.—In this rule, "rural branch" and "scheduled bank" shall have the meanings assigned to them in the *Explanation* to clause (*viia*) of sub-section (1) of section 36.]

[71][Infrastructure facility under clause (*d*) of the *Explanation* to clause (*viii*) of sub-section (1) of section 36.*

6ABAA. The conditions to be fulfilled by a public facility to be eligible to be notified as an infrastructure facility[72] in accordance with the provisions of clause (*d*) of the *Explanation* to clause (*viii*) of sub-section (1) of section 36 shall be the following, namely :—

(*a*) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(*b*) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (*i*) developing or (*ii*) operating and maintaining or (*iii*) developing, operating and maintaining a new infrastructure facility similar in nature to an infrastructure facility referred to in the *Explanation* to clause (*i*) of sub-section (4) of section 80-IA;

(*c*) it has started or starts operating and maintaining such infrastructure facility on or after the 1st day of April, 1995.]

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69. Substituted for "3B" by the IT (Eleventh Amdt.) Rules, 2006, w.e.f. 19-10-2006.
70. Inserted by the IT (Fifth Amdt.) Rules, 1979, w.e.f. 1-4-1980.
71. Inserted by the IT (Sixth Amdt.) Rules, 2006, w.e.f. 20-7-2006.
72. *See* notified infrastructure facility, *see* Taxmann's Master Guide to Income-tax Rules.

*Heading is provided by Editor.

[71][**Form of report for claiming deduction under clause (*xi*) of sub-section (1) of section 36.**

6ABB. The report of an accountant, which is required to be furnished under clause (*xi*) of sub-section (1) of section 36 shall be in Form No. 3BA.]

[73a][**Other electronic modes.**

6ABBA. *The following shall be the other electronic modes for the purposes of clause (d) of first proviso to section 13A, clause (f) of sub-section (8) of section 35AD, sub-section (3), sub-section (3A), proviso to sub-section (3A) and sub-section (4) of section 40A, second proviso to clause (1) of section 43, sub-section (4) of section 43CA, proviso to sub-section (1) of section 44AD, second proviso to sub-section (1) of section 50C, second proviso to sub-clause (b) of clause (x) of sub-section (2) of section 56, clause (b) of first proviso of clause (i) of* Explanation *to section 80JJAA, section 269SS, section 269ST and section 269T, namely:—*

(a) *Credit Card;*

(b) *Debit Card;*

(c) *Net Banking;*

(d) *IMPS (Immediate Payment Service);*

(e) *UPI (Unified Payment Interface);*

(f) *RTGS (Real Time Gross Settlement);*

(g) *NEFT (National Electronic Funds Transfer), and*

(h) *BHIM (Bharat Interface for Money) Aadhaar Pay.*]

Limits and conditions for allowance of expenditure in certain cases.

[74]**6AC.** [*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

Expenditure on advertisement.

[75]**6B.** [*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

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73. Inserted by the IT (Twentieth Amdt.) Rules, 1999, w.e.f. 1-4-2000.

73a. Inserted by the IT (Third Amdt.) Rules, 2020, w.r.e.f. **1-9-2019.**

74. Prior to its omission, rule 6AC, as inserted by the IT (Third Amdt.) Rules, 1965, as rule 6A and later substituted by the IT (Fourth Amdt.) Rules, 1965 and the IT (Second Amdt.) Rules, 1966 and renumbered as rule 6AA by the IT (Third Amdt.) Rules, 1970 and later renumbered as rule 6AC by the IT (Amdt.) Rules, 1972, read as under :

"6AC. *Limits and conditions for allowance of expenditure in certain cases.*—Expenditure referred to in sub-section (3) of section 37 shall be allowed only to the extent and subject to the conditions specified in rules 6B, 6C and 6D :

Provided that in the case of such expenditure incurred during the previous year commencing immediately prior to the 10th day of August, 1966, or any earlier previous year, the full amount thereof, if otherwise admissible under sub-section (1) of section 37, shall be allowed."

75. Prior to its omission, rule 6B, as inserted by the IT (Second Amdt.) Rules, 1966 [originally it was inserted by the IT (Third Amdt.) Rules, 1965 and omitted by the IT (Fourth Amdt.) Rules, 1965] and later amended by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988, IT (Tenth Amdt.) Rules, 1990, w.e.f. 12-4-1990 and IT (Eighth Amdt.) Rules, 1992, w.e.f. 1-4-1992, read as under :

(Contd. on p. 1.95)

(Contd. from p. 1.94)

'6B. *Expenditure on advertisement.*—(1) The allowance in respect of expenditure on advertisement shall not in the following cases exceed—

(*a*) in respect of articles intended for presentation,—

(*i*) where the amount of such expenditure does not exceed Rs. 1,000 on each such article, the whole of such amount ;

(*ii*) in any other case, Rs. 1,000 on each such article as increased by a sum equal to fifty per cent of the expenditure in excess of Rs. 1,000 on such article ;

(*b*) in respect of any advertisement outside India involving payment in foreign currency, the amount covered by foreign exchange granted to, or permitted to be acquired by, the assessee for this purpose under the law relating to the foreign exchange for the time being in force.

(2) (*i*) Where the Assessing Officer is of opinion that any expenditure on advertisement of the nature described in clause (*ii*) is excessive or unreasonable having regard to the legitimate business needs of the assessee and the benefit derived by or accruing to him therefrom, that portion of the expenditure which is so considered by him to be excessive or unreasonable shall not be allowed as a deduction in computing the total income.

(*ii*) The expenditure referred to in clause (*i*) is that incurred on advertisement involving payment—

(*A*) to a person (including in the case of a company, firm, an association of persons or a Hindu undivided family, a director, partner or member, as the case may be, of such company, firm, association or family) who has a substantial interest in the business of the assessee, or to a relative of such person ; or

(*B*) to a person who carries on the business of, or profession as, a publicity or advertising agent, where the assessee, or in a case where the assessee is a company, firm, an association of persons or a Hindu undivided family, any director, partner or member, as the case may be, of such company, firm, association or family, or any relative of such assessee or such director, partner or member, has a substantial interest in the business or profession of that person.

(3) Any expenditure on advertisement for which payment has been made in a sum exceeding Rs. 10,000 shall not be allowed as a deduction in computing the total income unless such payment is made by a crossed cheque drawn on a bank or by a crossed bank draft :

Provided that where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for expenditure on advertisement exceeding Rs. 10,000 and subsequently during any previous year the assessee makes payment in respect thereof otherwise than in accordance with the provisions of this clause, the allowance originally made shall be deemed to have been wrongly made and the Assessing Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made.

Explanation : For the purposes of this rule,—

(*i*) "relative" shall have the meaning assigned to it in clause (*41*) of section 2;

(*ii*) a person shall be deemed to have a substantial interest in a business or profession, if—

(*a*) in a case where a business or profession is carried on by a company, such person is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits, carrying not less than twenty per cent of the voting power ; and

(*b*) in any other case, such person is beneficially entitled to not less than twenty per cent of the profits of such business or profession.'

Expenditure on residential accommodation including guest houses.

6C. [*Omitted by the IT (Amdt.) Rules, 1973, w.e.f. 1-4-1973. Original rule 6C was inserted by the IT (Third Amdt.) Rules, 1965 and later omitted by the IT (Fourth Amdt.) Rules, 1965. It was again inserted by the IT (Second Amdt.) Rules, 1966.*]

Expenditure in connection with travelling, etc.

6D. [76][*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

[77][[78][[78a]***Cases and circumstances in which a payment or aggregate of payments exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6ABBA.***]

6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profes-

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76. Prior to its omission, rule 6D, as inserted by the IT (Second Amdt.) Rules, 1966 [originally it was inserted by the IT (Third Amdt.) Rules, 1965 and omitted by the IT (Fourth Amdt.) Rules, 1965] and later on amended by the IT (Eighth Amdt.) Rules, 1992, w.e.f. 1-4-1992, IT (Fourth Amdt.) Rules, 1980, w.e.f. 18-6-1980 and IT (Fifth Amdt.) Rules, 1975, read as under :

'6D. *Expenditure in connection with travelling, etc.*—(1)(*i*) The allowance in respect of expenditure incurred by an assessee in connection with travelling by an employee or any other person outside India for the purposes of the business or profession of the assessee shall not exceed the amount which bears to the aggregate of the amount, if any, covered by foreign exchange granted, or permitted to be acquired, for the purpose of such travel under the law relating to foreign exchange for the time being in force and the amount expended on such travel in Indian currency, the same proportion as is determined in the manner specified in clause (*ii*).

(*ii*) The proportion referred to in clause (*i*) shall be determined by dividing the number of days mainly devoted by such employee or other person for the purposes of the business or profession of the assessee outside India by the total number of days spent by such employee or other person outside India (excluding, in either case, the number of days required for such travel by a reasonably direct route in the mode of travel adopted by him).

Explanation.—For the purpose of this rule, the expression "days mainly devoted by such employee or other person for the purposes of the business or profession of the assessee outside India" shall include any public holiday in a foreign country on which such employee or other person is required to stay outside India, provided that the working days immediately following such public holiday is mainly devoted by him for the purposes of the business or profession of the assessee.

(2) The allowance in respect of expenditure incurred by an assessee in connection with travelling by an employee or any other person within India outside the headquarters of such employee or other person for the purposes of the business or profession of the assessee shall not exceed the aggregate of the amounts computed as hereunder :—

(*a*) in respect of travel by rail, road, waterway or air, the expenditure actually incurred ;

(*b*) in respect of any other expenditure (including hotel expenses or allowances paid) in connection with such travel, an amount calculated at the following rates for the period spent outside such headquarters :—

(*i*) where the amount of such expenditure does not exceed Rs. 1,500 per day, the whole of such amount ;

(Contd. on p. 1.97)

sion under sub-section (3A) of section 40A where a payment[77] or aggregate of payments made to a person in a day, otherwise than by an account payee[78] cheque drawn on a bank or [81][*account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees*] in the cases and circumstances specified hereunder, namely :—

(Contd. from p. 1.96)

(*ii*) in any other case, Rs. 1,500 as increased by a sum equal to seventy-five per cent of such expenditure in excess of Rs. 1,500 per day.'

77. Substituted by the IT (Seventh Amdt.) Rules, 2008, with effect from assessment year 2009-10. Prior to its substitution, rule 6DD, as amended by the IT (Eighth Amdt.) Rules, 2007, with effect from assessment year 2008-09, IT (Amdt.) Rules, 1969, w.e.f. 1-4-1969, IT (Fourth Amdt.) Rules, 1970, w.e.f. 1-4-1970, IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988/w.e.f. 18-5-1989, IT (Fourteenth Amdt.) Rules, 1995, w.e.f. 25-7-1995, IT (Twenty-first Amdt.) Rules, 1995, w.e.f. 1-12-1995, IT (Thirty-first Amdt.) Rules, 1999, w.r.e.f. 1-4-1997, IT (Sixteenth Amdt.) Rules, 2000, w.r.e.f. 25-7-1995 and IT (Thirteenth Amdt.) Rules, 2006, w.e.f. 9-11-2006.

78. Substituted for "Cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft." by the IT (Third Amdt.) Rules, 2020, w.e.f. **29-1-2020.**

78a. Rule 6DD is constitutionally valid - *Attar Singh Gurmukh Singh* v. *ITO* [1991] 191 ITR 667 (SC)/*Mudiam Oil Co.* v. *ITO* [1973] 92 ITR 519 (AP). Section 40A(3) is not in violation of article 265 of the Constitution - *ITO* v. *Kenaram Saha & Subhash Saha* [2009] 116 ITD 1 (Kol. - Trib.) (SB). The rule will apply even for computation of income under 'other sources'. The term 'bank' will include indigenous money-lenders' banks provided they are specifically notified under section 49A of the Banking Regulation Act - *Circular No. 6P, dated 6-7-1968.* Section 40A(3) can be invoked only if the expenditure has been claimed as a deduction by the assessee - *Saral Motors & General Finance Ltd.* v. *Asstt. CIT* [2009] 121 ITD 50 (Delhi - Trib.). Addition cannot be made simultaneously on same amount by applying provisions of section 40A(3) as well as section 40(*a*)(*ia*) - *Ghosh & Chakraborty Transport* v. *ITO* [2013] 34 taxmann.com 35 (Kol. - Trib.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

79. The term 'expenditure' refers to any payment made by assessee, and is not confined to expenditure deductible under section 37 - *Sajowanlal Jaiswal* v. *CIT* [1976] 103 ITR 706 (Ori.). It will cover payments for acquisition of stock-in-trade or raw materials - *Attar Singh Gurmukh Singh* v. *ITO* [1997] 191 ITR 667 (SC). Even advances made for purchase of goods are covered - *Kejriwal Iron Stores* v. *CIT* [1988] 169 ITR 12 (Raj.). Payments by film distributor for acquisition of distribution rights are covered - *Akash Films* v. *CIT* [1991] 190 ITR 32 (Kar.). However, payments representing loans or their repayments are not covered - *Press Note, dated 2-5-1969/Letter F. No. 1(22)/69-TPL (Pt.), dated 18-4-1969.* For details, *see* Taxmann's Master Guide to Income-tax Rules.

80. So far as compliance with requirement of section 40A(3) is concerned, payment made by a crossed cheque cannot be considered as payment made by account payee cheque - *Rajmoti Industries* v. *Asstt. CIT* [2013] 39 taxmann.com 130 (Rajkot - Trib.). Where payment is partly in cash and partly by cheque, ceiling will apply to cash portion only - *H.A. Nek Mohd. & Sons* v. *CIT* [1982] 135 ITR 501 (All.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

81. Substituted for "account payee bank draft, exceeds twenty thousand rupees" by the IT (Third Amdt.) Rules, 2020, w.e.f. **29-1-2020.**

[82](*a*) where the payment is made to—

(*i*) the Reserve Bank of India or any banking company[83] as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(*ii*) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959)[84];

(*iii*) any co-operative bank or land mortgage bank;

(*iv*) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);

(*v*) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

[85](*b*) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender[86];

(*c*) where the payment is made by—

(*i*) any letter of credit arrangements through a bank;

(*ii*) a mail or telegraphic transfer through a bank;

(*iii*) a book adjustment from any account in a bank to any other account in that or any other bank;

(*iv*) a bill of exchange made payable only to a bank;

(*v*) to (*vii*) [86a][***]

Explanation.—For the purposes of this clause and clause (*g*), the term "bank" means any bank, banking company or society referred to in sub-

82. Rule 6DD(*a*) applies only to payments to institutions referred to therein and not to payments made in any party's account maintained by institutions referred to therein - *K. Abdu & Co.* v. *ITO* [2008] 170 Taxman 297 (Ker.).

83. For definition of "banking company" under clause (*c*) of section 5 of the Banking Regulation Act, 1949, *see* **Appendix**.

84. Now repealed.

85. Payment of freight charges/booking of wagons to railways, and payment of sales tax/excise duty are covered by this exception—Circular No. 34, dated 5-3-1970. For details, *see* Taxmann's Master Guide to Income-tax Rules.

86. Payment made to government concern (*viz.*, Railways) in cash in excess of amount prescribed under section 40A(3) would be allowable - *CIT* v. *Devendrappa M. Kalal* [2013] 39 taxmann.com 16/219 Taxman 122 (Kar.). Payment made in cash to Airport Authority is not disallowable under section 40A(3) - *CIT* v. *SRC Aviation (P.) Ltd.* [2013] 37 taxmann.com 308/218 Taxman 62 (Mag.) (Delhi). Octroi duty paid by assessee to Municipal Corporation on goods transported within municipal limits does not come under provisions of section 40A(3), read with rule 6DD(*b*) - *CIT* v. *Arvind Mills Ltd.* [2014] 52 taxmann.com 475/[2015] 228 Taxman 358 (Mag.) (Guj.). Maharashtra State Road Transport Corporation is a 'State' for purposes of section 40A(3) - *Smt. Sapna Sanjay Raisoni* v. *ITO* [2016] 70 taxmann.com 7/159 ITD 1 (Pune - Trib.).

86a. Omitted by the IT (Third Amdt.) Rules, 2020, w.e.f. **29-1-2020**. Prior to their omission, sub-clauses (*v*), (*vi*) and (*vii*) read as under :

"(*v*) the use of electronic clearing system through a bank account;

(*vi*) a credit card;

(*vii*) a debit card."

clauses (*i*) to (*iv*) of clause (*a*) and includes any bank [not being a banking company[87] as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

[88](*d*) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

[89](*e*) where the payment is made for the purchase of—

(*i*) agricultural or forest produce; or

(*ii*) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(*iii*) fish or fish products[90]; or

(*iv*) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;

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87. *See* footnote No. 83 on page No. 1.98 *ante*.

88. Where assessee purchased old jewellery from customers on a condition that in turn they would buy new jewellery from assessee, provisions of section 40A(3) were not attracted in respect of payment of differential purchase amount in cash - *Dy. CIT* v. *Kirtilal Kalidas Jewellers (P.) Ltd.* [2012] 27 taxmann.com 341/54 SOT 529 (Chennai - Trib.).

89. The words 'cultivator, grower or producer' occurring at the end of this sub-rule qualify the words occurring in all the preceding four sub-clauses, and not merely sub-clause (*iv*)—*CIT* v. *Pehlaj Rai Daryanmal* [1991] 190 ITR 242 (All). Exclusion to operate even if product has undergone any change - *Press Note dated 2-5-1969*. Payments to middlemen are not covered - *Letter F.No. 1/22/69-TPL (Pt.), dated 18-4-1969*. Exception will not apply to payments made to 'arhatiyas'—*Circular No. 34, dated 5-3-1970*. In *ITO* v. *Ram Prakash* [2014] 52 taxmann.com 361/[2015] 67 SOT 126 (URO) (Agra), it was held that payment to Kachcha Aaratia by assessee was to be taken as a payment to farmer as such Aaratia held agency relationship and he did not receive payment in his own right and, hence, Assessing Officer could not invoke section 40A(3). Exception will not be available on purchase of hides and skins from a person who is not proved to be the producer of the goods—*Ideal Tannery* v. *CIT* [1979] 117 ITR 34 (All.). To satisfy test of rule 6DD(*e*), not only payment should be made for purchase or produce of animal husbandry but payment is to be made to producer of such produce - *ITO* v. *Kenaram Saha & Subhash Saha* [2009] 116 ITD 1 (Kol. - Trib.)(SB). Rule 6DD(*e*) nowhere says that such producer must belong to rural areas where banking facility is not available - *Hybro Foods (P.) Ltd.* v. *ITO* [2008] 115 ITD 73/25 SOT 143 (Mum.-Trib.). Purchase of *Dhania* (an agricultural produce) is eligible for the exception—*Kanti Lal Purshottam & Co.* v. *CIT* [1985] 155 ITR 519 (Raj.). Hoshiarpur District Co-operative Milk Producers Union cannot be considered to be producer of milk and, therefore, payment made by assessee to Union would not come under rule 6DD(*e*) - *Smt. Chanchal Dogra* v. *ITO* [2012] 247 CTR (HP) 616. Payment made by assessee, manufacturer of milk products, to milk producer through an agent in cash for purchase of milk would be covered by exception contained in clause (*e*) - *Dy./ Asstt. CIT* v. *Heritage Foods (India) Ltd.* [2012] 25 taxmann.com 209/53 SOT 204 (URO) (Hyd. - Trib.). In *CIT* v. *Keerthi Agro Mills (P.) Ltd.* [2017] 87 taxmann.com 31 (Ker.) [SLP dismissed in *Principal CIT* v. *Keerthi Agro Mills (P.) Ltd.* [2018] 95 taxmann.com 282/257 Taxman 1 (SC)] it was held that section 40A(3) is a deeming provision; rule 6DD clearly exempts the agricultural produce, *i.e.*, 'paddy', from the rigours of section 40A(3). In *ITO* v. *Standard Leather (P.) Ltd.* [2016] 76 taxmann.com 109/ [2017] 162 ITD 285 (Kol. - Trib.) for purpose of manufacturing leather and leather products the assessee purchased raw hides/skins from local producers. The assessee made cash payments exceeding Rs. 20,000. The purchases were for manufacturing and there were genuine sales. It was held that the payment made by the assessee would be covered by rule 6DD and no disallowance was to be made by the Assessing Officer under section 40A(3).

(Contd. on p. 1.100)

(*f*) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

[91](*g*) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides or is carrying on any business, profession or vocation, in any such village or town;

(*h*) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(*i*) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee—

(Contd. from p. 1.99)

The expression "the produce of animal husbandry" used under rule 6DD(*e*)(*ii*) would include "livestock and meat"; further exception will not be available on the payment for the purchase of livestock, meat, hides and skins from a person who is not proved to be the producer of these goods and is only a trader, broker or any other middleman by whatever name called - *Circular No. 4/2006, dated 29-3-2006.* Any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as producer of livestock and meat. The benefit of rule 6DD shall be available to him subject to furnishing of prescribed document - *Circular No. 8/2006, dated 6-10-2006. See* also *Press Release, dated 2-5-1969.* No disallowance under section 40A(3) in case of cash sale of agricultural produce by cultivators/ agriculturist to traders - *See Circular No. 27/2017, dated 3-11-2017.* For details, *see* Taxmann's Master Guide to Income-tax Rules.

90. Circular No. 10/2008, dated 5-12-2008, provides as under :

- The expression 'fish or fish products' used in rule 6DD(*e*)(*iii*) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster, etc.'
- The 'producers' of 'fish or fish products' for the purpose of rule 6DD(*e*) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea-shore itself and then sells the fish or fish products to traders, exporters, etc.
- Exception provided under rule 6DD(*e*)(*iii*) will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

'Processed fish' is covered under 'fish or fish products' - *CIT* v. *Interseas, Sea Food Exporters* [2010] 188 Taxman 343 (Ker.). In *CIT* v. *Blue Water Foods & Exports (P.) Ltd.* [2015] 55 taxmann.com 511/231 Taxman 377 (Kar.), it was held that it is only when fish is purchased from a trader, broker or any other middleman, that benefit of rule 6DD is not available. Where the assessee had purchased fish from fisherman/headman of fisher, no disallowance under section 40A(3) could be made even if payment in cash exceeded Rs. 20,000.

91. In *Principal CIT* v. *Lord Chloro Alkali Ltd.* [2018] 97 taxmann.com 513 (Raj.) [SLP dismissed in *Principal CIT* v. *Lord Chloro Alkali Ltd.* [2018] 97 taxmann.com 514/258 Taxman 130 (SC)] it was held that cash payments made to transporters in excess of limit prescribed under section 40A(3) could not be disallowed because factory was located in a backward area and banking facilities were not available in said area. In *Madhav Govind Dhulshete* v. *ITO* [2018] 99 taxmann.com 56/259 Taxman 149 (Bom.) assessee, engaged in business of sale of Kerosene, purchased it from notified dealer by making payment in cash on ground that said payment was made as per guidance of District Civil Supply Officer. It was held that in view

(Contd. on p. 1.101)

(*i*) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(*ii*) does not maintain any account in any bank at such place or ship;

(*j*) [92][***]

(*k*) where the payment is made by any person to his agent[93] who is required to make payment in cash for goods or services on behalf of such person;

(*l*) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

Explanation.—For the purposes of this clause, the expressions "authorised dealer" or "money changer" means a person authorised as an authorised dealer or a money changer to deal in foreign currency or foreign exchange under any law for the time being in force.]

[94]**[Conditions that a stock exchange is required to fulfil to be notified as a recognised stock exchange for the purposes of clause (*d*) of proviso to clause (*5*) of section 43.**

6DDA. For the purposes of clause (*d*) of proviso to clause (*5*) of section 43, a stock exchange shall fulfil the following conditions in respect of trading in derivatives, namely :—

(*i*) the stock exchange shall have the approval of the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) in respect of trading in derivatives

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(Contd. from p. 1.100)

of fact that District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, impugned disallowance was rightly made by authorities below under section 40A(3).

If place where recipient resides or carries on business is having banking facility, conditions of rule 6DD(*g*) would not be satisfied merely because recipient has not opened his bank account - *ITO* v. *Kenaram Saha & Subhash Saha* [2009] 116 ITD 1 (Kol. - Trib.)(SB). Where assessee made payments to sellers of agricultural land in cash in presence of Sub-Registrar at those places where banking facilities were not available, said payments were covered under second proviso to section 40A(3) and rule 6DD(*g*) - *Saraswati Housing & Developers* v. *Addl. CIT* [2013] 32 taxmann.com 307 (Delhi - Trib.).

92. Omitted by the IT (Third Amdt.) Rules, 2020, w.e.f. **29-1-2020**. Prior to its omission, clause (*j*) read as under :

"(*j*) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;"

93. Employee is not 'agent' - *Dy. CIT* v. *Vijay Kumar Ramesh Chand & Co.* [2007] 108 ITD 626 (Pune - Trib.). No disallowance under section 40A(3), read with rule 6DD(*e*) and (*k*), was called for where cash purchases were made in commission agency business in food grains and assessee was maintaining all books of account and also accounts on all statutory forms required under U.P. Krishi Utpadan Mandi Adhiniyam, 1962 - *CIT* v. *Sunil Kumar Agrawal* [2013] 38 taxmann.com 386/219 Taxman 118 (All.). Where assessee directly deposited money in bank account of its agent, no disallowance could be made under section 40A(3) in respect of said deposit - *CIT* v. *Smt. Shelly Passi* [2013] 31 taxmann.com 173/213 Taxman 213 (Mag.) (Punj. & Har.). Payments made in excess of Rs. 20,000 by ginning factory to its agents for procuring cotton could not be disallowed under section 40A(3) - *CIT* v. *Sri Shanmuga Ginning Factory* [2013] 37 taxmann.com 422/218 Taxman 76 (Mag.) (Mad.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

94. Inserted by the IT (Twentieth Amdt.) Rules, 2005, w.e.f. 1-7-2005.

and shall function in accordance with the guidelines or conditions laid down by the Securities and Exchange Board of India;

(*ii*) the stock exchange shall ensure that the particulars of the client (including unique client identity number and PAN) are duly recorded and stored in its databases;

(*iii*) the stock exchange shall maintain a complete audit trail of all transactions (in respect of cash and derivative market) for a period of seven years on its system;

[95][(*iv*) the stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased;]

[96][(*v*) the stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error and maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates.]

Notification of a recognised stock exchange for the purposes of clause (*d*) of proviso to clause (5) of section 43.

6DDB. (1) An application for notification of a stock exchange as a recognised stock exchange for the purposes of clause (*d*) of proviso to clause (5) of section 43 may be made to the [97][Member (Income Tax)], Central Board of Direct Taxes, North Block, New Delhi - 110001.

(2) The application referred to in sub-rule (1) shall be accompanied with the following documents, namely :—

(*i*) approval granted by Securities and Exchange Board of India for trading in derivatives;

(*ii*) up-to-date rules, bye-laws and trading regulations of the stock exchange;

(*iii*) confirmation regarding fulfilling the conditions referred to in clause (*ii*) to [98][clause (*v*)] of rule 6DDA;

(*iv*) such other information as the stock exchange may like to place before the Central Government.

(3) The Central Government may call for such other information from the applicant as it deems necessary for taking a decision on the application.

(4) The Central Government, after examining the information furnished by the stock exchange under sub-rule (2) or sub-rule (3), shall notify[99] the stock exchange as a recognised stock exchange for the purposes of clause (*d*) of proviso to clause (5) of section 43 or issue an order rejecting the application before the expiry of four months from the end of the month in which the application is received.

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95. Substituted by the IT (First Amdt.) Rules, 2011, w.e.f. 1-4-2011. Prior to its substitution, clause (*iv*) read as under :
"(*iv*) the stock exchange shall ensure that transactions once registered in the system cannot be erased or modified."
96. Inserted, *ibid.*
97. Substituted for "Member (L)" by the IT (Third Amdt.) Rules, 2017, w.e.f. 23-3-2017.
98. Substituted for "clause (*iv*)" by the IT (First Amdt.) Rules, 2011, w.e.f. 1-4-2011.
99. Notified Stock Exchanges :
- National Stock Exchange of India Ltd., Mumbai
- Bombay Stock Exchange Limited, Mumbai - SO 89(E), dated 25-1-2006.

(Contd. on p. 1.103)

(5) The notification referred to in sub-rule (4) shall be effective until the approval granted by the Securities and Exchange Board of India is withdrawn or expired, or the notification is rescinded by the Central Government.]

[1][**Conditions that a recognised association is required to fulfil to be notified as a recognised association for the purposes of clause (*e*) of the proviso to clause (*5*) of section 43.**

6DDC. For the purposes of clause (*e*) of the proviso to clause (*5*) of section 43, a recognised association shall fulfil the following conditions in respect of trading in derivatives, namely:—

(*i*) the recognised association shall have the approval of the Forward Markets Commission established under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) in respect of trading in derivatives and shall function in accordance with the guidelines or conditions laid down by the Forward Markets Commission;

(*ii*) the recognised association shall ensure that the particulars of the client (including unique client identity number and PAN) are duly recorded and stored in its databases;

(*iii*) the recognised association shall maintain a complete audit trail of all transactions (in respect of derivative market) for a period of seven years on its system;

(*iv*) the recognised association shall ensure that transactions (in respect of derivative market) once registered in the system are not erased;

(*v*) the recognised association shall ensure that the transactions (in respect of derivative market) once registered in the system are modified only in cases of genuine error and maintain data regarding all transactions (in respect of derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BC to the Director General of Income-tax (Intelligence and Criminal Investigation), New Delhi within fifteen days from the last day of each month to which such statement relates.

Notification of a recognised association for the purposes of clause (e) of the proviso to clause (5) of section 43.

6DDD. (1) An application for notification of a recognised association (as per clause (*j*) of section 2[2] of the Forward Contracts (Regulation) Act, 1952) as a recognised association for the purposes of clause (*e*) of the proviso to clause (*5*) of section 43 may be made to the [3][Member (Income Tax)], Central Board of Direct Taxes, North Block, New Delhi.

(2) The application referred to in sub-rule (1) shall be accompanied with the following documents, namely :—

(Contd. from p. 1.102)

- MCX Stock Exchange Ltd. - SO 1327(E), dated 22-5-2009.
- United Stock Exchange of India Limited - Notification No. 12/2011 [F. No. 142/20/2010-SO(TPL)], dated 25-2-2011.
- NSE IFSC Ltd., Gandhinagar, Gujarat - SO 3969(E), dated 31-7-2018.
- Indian International Exchange (IFSC) Ltd., Gandhinagar, Gujarat - SO 3968(E), dated 31-7-2018.

See also *Asstt. CIT* v. *Hiren Jaswantrai Shah* [2011] 46 SOT 276/12 taxmann.com 55 (Ahd. - Trib.)/*Asstt. CIT* v. *Vimal Vadilal Shah* [2012] 54 SOT 458/27 taxmann.com 179 (Ahd. - Trib.)/*Asstt. CIT* v. *Arnav Akshay Mehta* [2012] 53 SOT 581/25 taxmann.com 252 (Mum. - Trib.).

1. Rules 6DDC and 6DDD inserted by the IT (Ninth Amdt.) Rules, 2013, w.e.f. 4-7-2013.
2. For text of section 2(*j*) of the Forward Contracts (Regulation) Act, 1952, *see* **Appendix.**
3. Substituted for "Member (Legislation)" by the IT (Third Amdt.) Rules, 2017, w.e.f. 23-3-2017.

(*i*) approval granted by Forward Markets Commission for trading in derivatives;

(*ii*) up-to-date rules, bye-laws and trading regulations of the recognised association;

(*iii*) confirmation regarding fulfilling the conditions referred to in clause (*ii*) to clause (*v*) of rule 6DDC;

(*iv*) such other information as the recognised association may like to place before the Central Government.

(3) The Central Government may call for such other information from the applicant as it deems necessary for taking a decision on the application.

(4) The Central Government, after examining the information furnished by the recognised association under sub-rule (2) or sub-rule (3), shall notify the recognised association[4] as a recognised association for the purposes of clause (*e*) of the proviso to clause (*5*) of section 43 or issue an order rejecting the application before the expiry of four months from the end of the month in which the application is received.

(5) The notification referred to in sub-rule (4) shall be effective until the approval granted by the Forward Markets Commission is withdrawn or expired, or the notification is rescinded by the Central Government.]

[5][**Limits of reserve for unexpired risks.**

6E. In the computation of profits and gains of any business of insurance other than life insurance, the amount carried over to a reserve for unexpired risks including any amount carried over to any such additional reserve which is to be allowed as a deduction under clause (*c*) of rule 5 of the First Schedule, shall not exceed—

[6][(*a*) where the insurance business relates to fire insurance or engineering insurance and which provides insurance for terrorism risks, 100 per cent of the net premium income of such business of the previous year;

(*aa*) where the insurance business relates to fire insurance or miscellaneous insurance other than the insurance business covered under clause (*a*), 50 per cent of the net premium income of such business of the previous year;]

(*b*) where the insurance business relates to marine insurance, 100 per cent of the net premium income of such business of the previous year:

Provided that any amount out of the amount carried over to such reserve or additional reserve which is not allowed as a deduction under this rule in respect of

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4. Notified recognised associations are :
   - National Commodity and Derivatives Exchange Limited, Mumbai - SO 3513(E), dated 27-11-2013.
   - Multi Commodity Exchange of India Limited, Mumbai - SO 3539(E), dated 29-11-2013.
   - Universal Commodity Exchange Limited, Mumbai - SO 3514(E), dated 27-11-2013.
   - Ace Derivatives & Commodity Exchange Limited, Ahmedabad - SO 834(E), dated 20-3-2014.
   - Indian Commodity Exchange Limited - SO 5657(E), dated 31-10-2018.
   - BSE Limited - SO 772(E), dated 31-1-2019.
   - National Stock Exchange of India Ltd. - SO 4282(E), dated 27-11-2019.
5. Inserted by the IT (Second Amdt.) Rules, 1962, as rule 6A and later renumbered as rule 6E by the IT (Third Amdt.) Rules, 1965, rule 6B by the IT (Fourth Amdt.) Rules, 1965 and rule 6E by the IT (Second Amdt.) Rules, 1966.
6. Substituted by the IT (Seventh Amdt.) Rules, 2002, w.e.f. 1-4-2003. Prior to its substitution, it read as under :

   "(*a*) where the insurance business relates to fire insurance or miscellaneous insurance, 50 per cent of the net premium income of such business of the previous year;"

any previous year shall not be included in the total income for the assessment year relevant to the immediately next succeeding previous year in the revenue account relating to which the amount aforesaid is credited.

[*Explanation.*—For the purposes of this rule,—

(*a*) "net premium income" means the amount of premium received as reduced by the amount of reinsurance premium paid during the relevant previous year;

(*b*) "marine insurance" includes the Export Credit Insurance.][7]

***Special provision regarding interest on bad and doubtful debts of financial institutions, banks, etc.**

[8][**6EA.** The provisions of section 43D shall apply in the case of every public financial institution, scheduled bank, State financial corporation and State industrial investment corporation where its income by way of interest pertains to the following categories of bad and doubtful debts, namely:—

(*a*) (*i*) Non-viable or sticky advances, *i.e.*, where irregularities of the nature specified in sub-clause (*ii*) are noticed in the accounts of the borrowers for a period of six months and more and there are no minimum prospects of regularisation of accounts, or where the accounts or information in relation to such accounts reflect usual signs of sickness, such as,—

(*1*) apparent stagnation in the business as a result of the slow or negligible turnover;

(*2*) frequent requests for overdrawing or issue of cheques without ensuring availability of funds in the account;

(*3*) bills purchased or discounted remain overdue for 3 months and more or the recovery of such bills from the borrower poses difficulties;

(*4*) in the case of term-loans, instalments which are overdue for 6 months or more;

(*5*) unexplained delays by the borrower in submission of quarterly or half-yearly operating statements or stock statements or balance sheets and other information required by the bank;

(*6*) slow movement or stagnation of stocks observed during inspections;

(*7*) low or negligible level of activity observed during inspections or suspension or closure of the business;

(*8*) persistent delay in compliance with vital requirements like execution of documents, producing additional security when required or non-compliance with such requirements;

(*9*) diversion of funds to sister units or acquiring capital assets not relevant to the business or large personal withdrawals by the borrowers;

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7. Substituted for the following by the IT (First Amdt.) Rules, 1997, w.r.e.f. 9-8-1962:
'*Explanation.*—For the purposes of this rule, "net premium income" means the amount of premiums received as reduced by the amount of reinsurance premiums paid during the relevant previous year.'

8. Inserted by the IT (Tenth Amdt.) Rules, 1992, w.r.e.f. 1-4-1992.

*Heading is provided by Editor.

(*10*) intentional non-adherence to project schedules leading to substantial cost escalations and requirement of additional term finance;

(*11*) the pressure on the liquidity leading to non-payment of wages to workers or statutory dues or rents of office and factory premises;

(*12*) the current liabilities exceeding current assets;

(*13*) any grave irregularities observed by the auditors of the borrowers which remain to be rectified;

(*14*) basic weakness revealed by the financial statements of the unit, for example, continued cash loss beyond one year.

(*ii*) The irregularities referred to in sub-clause (*i*) in the accounts of the borrowers are,—

(*1*) where the accounts are overdrawn beyond the drawing power or the sanctioned limit, for a temporary period;

(*2*) instalments in respect of term-loans are overdue for less than 6 months or import bills under letters of credit or instalments under deferred payment carried are overdue for less than 3 months;

(*3*) bills not exceeding 10% to 15% of the total outstandings in the bills purchased or discounted account of the borrower are overdue for payment for a period of less than 3 months and refund in respect of unpaid bills is not forthcoming immediately.

(*b*) Advances recalled, *i.e.*, where the repayment is highly doubtful and revival of the unit is not considered worthwhile and a decision has been taken to recall the advances.

(*c*) Suit-filed accounts, *i.e.*, where legal action or recovery proceedings have been initiated and suits are pending for recovery of advances.

(*d*) Decreed debts, *i.e.*, where suits have been filed and decree obtained and such decree is pending for execution.

(*e*) Debts recoverability whereof has become doubtful on account of shortfalls in value of security, difficulty in enforcing and realising the securities, or inability or unwillingness of the borrower to repay the banks dues, partly or wholly, and such debts have not been included in preceding clauses (*a*) to (*d*).]

[9][Categories of bad or doubtful debts in the case of a public company under clause (*b*) of section 43D.

6EB. The provisions of clause (*b*) of section 43D shall apply in the case of every public company where its income by way of interest pertains to the following categories of bad and doubtful debts, namely :—

9. Inserted by the IT (Thirtieth Amdt.) Rules, 1999, w.e.f. 6-10-1999.

(*a*) (*i*) doubtful asset, that is, a debt which has remained a non-performing asset of the nature specified in sub-clause (*ii*) for a period exceeding two years;

(*ii*) non-performing asset referred to in sub-clause (*i*) shall be the following :—

(*1*) term loan beyond one year, if the interest amount remains "past due" for six months or instalment is overdue for more than six months;

(*2*) lease rental or hire purchase instalment, if the rental or the instalment is "past due" for six months;

(*3*) bill purchased or discounted, if the bill remains overdue and unpaid for six months; or

(*4*) any other credit facility in the nature of short term loan or advance [other than those referred to in (*1*), (*2*) and (*3*) above], if any amount to be received in respect of such a facility remains "past due" for a period of six months;

(*b*) loss asset, that is, a debt which has been identified as loss and considered as uncollectible but has not been written off in the accounts of the assessee.

Explanation.—For the purposes of this rule, an amount shall be deemed to be "past due" when it remains unpaid for thirty days beyond the due date.]

[10][*CC.—Books of account*

[11]**Books of account and other documents to be kept and maintained under section 44AA(3) by persons carrying on certain professions.**

6F. (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist shall keep and maintain the books of account and other documents[12] specified in sub-rule (2) :

[13][**Provided** that nothing in this sub-rule shall apply in relation to any previous year in the case of any person if his total gross receipts in the profession do not exceed

10. Inserted by the IT (Ninth Amdt.) Rules, 1981, w.e.f. 21-11-1981.

11. *See* section 295(2)(*dda*). Section 44AA is valid and is not violative of the Constitution—*H.A.K. Rao* v. *Union of India* [1991] 189 ITR 322 (Kar.).
It is true that section 44AA nowhere provides that books of account maintained by medical professional and other professionals, must be based on valuation report of technically qualified persons; however, that does not mean that whatever has been shown by assessee must be taken as a gospel truth - *Smt. Kiran Lata* v. *ITAT* [2009] 177 Taxman 420 (Uttarakhand).

12. It is not within scope and ambit of the power of AO to compel assessee to maintain its accounts according to AS-7 - *Blue Heaven Construction* v. *ITO* [2010] 39 SOT 39 (Kol. - Trib.)

13. Substituted by the IT (First Amdt.) Rules, 2000, w.e.f. 6-4-2000. Prior to its substitution, proviso, as inserted by the IT (Fifth Amdt.) Rules, 1983, w.e.f. 28-2-1983, read as under :

(Contd. on p. 1.109)

one lakh fifty thousand rupees in any one of the three years[14] immediately preceding the previous year, or, where the profession has been newly set up in the previous year, his total gross receipts in the profession for that year are not likely to exceed the said amount.]

(2) The books of account and other documents referred to in sub-rule (1) shall be the following, namely:—

(*i*) a cash book;

(*ii*) a journal, if the accounts are maintained according to the mercantile system of accounting;

(*iii*) a ledger;

[15][(*iv*) carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the person, and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him:

Provided that nothing in this clause shall apply in relation to sums not exceeding twenty-five rupees;]

(*v*) original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed fifty rupees, payment vouchers prepared and signed by the person:

[16][**Provided** that the requirements as to the preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of the expenditure incurred by him.]

Explanation.—In this rule,—

(*a*) "authorised representative" means a person who represents any other person, on payment of any fee or remuneration before any Tribunal or

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(Contd. from p. 1.107)

"**Provided** that nothing in this sub-rule shall apply in relation to any previous year—

(*a*) in the case of any person [other than a person referred to in clause (*b*)], if his total gross receipts in the profession do not exceed sixty thousand rupees in any one of the three years immediately preceding the previous year, or, where the profession has been newly set up in the previous year, his total gross receipts in the profession for that year are not likely to exceed the said amount;

(*b*) in the case of a person who, in the course of his medical profession, dispenses drugs and medicines, his total gross receipts in the profession do not exceed eighty thousand rupees in any one of the three years immediately preceding the previous year, or, where the profession (including the dispensing of drugs and medicines) has been newly set up in the previous year, his total gross receipts in the profession for that year are not likely to exceed the said amount."

14. Where the assessee's gross professional receipts in one of the three years preceding the previous year in question have not exceeded Rs. 1,50,000, the assessee is not required to maintain books of account for that previous year even though such gross receipts have exceeded Rs. 1,50,000 in the other two preceding years - *A. Keshava Bhat* v. *ITO* [2001] 237 ITR 83/115 Taxman 208 (Kar.).

15. Substituted by the IT (Fifth Amdt.) Rules, 1983, w.e.f. 28-2-1983.

16. Inserted, *ibid.*

authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy;

(*b*) "cash book" means a record of all cash receipts and payments, kept and maintained from day-to-day and giving the cash balance in hand at the end of each day or at the end of a specified period not exceeding a [17][month];

(*c*) [18]"film artist" means any person engaged in his professional capacity in the production of a cinematograph film whether produced by him or by any other person, as—

(*i*) an actor[18];

(*ii*) a cameraman;

(*iii*) a director, including an assistant director;

(*iv*) a music director, including an assistant music director;

(*v*) an art director, including an assistant art director;

(*vi*) a dance director, including an assistant dance director;

(*vii*) an editor;

(*viii*) a singer;

(*ix*) a lyricist;

(*x*) a story writer;

(*xi*) a screen-play writer;

(*xii*) a dialogue writer; and

(*xiii*) a dress designer.

[19](3) A person carrying on medical profession shall, in addition to the books of account and other documents specified in sub-rule (2), keep and maintain the following, namely :—

(*i*) a daily case register in Form No. 3C;

(*ii*) an inventory [20][under broad heads,] as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

(4) The books of account and other documents specified in sub-rule (2) and sub-rule (3) [20][other than those relating to a previous year which has come to an end] shall be kept and maintained by the person at the place where he is carrying on the

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17. Substituted for "week" by the IT (Fifth Amdt.) Rules, 1983, w.e.f. 28-2-1983.

18. A person who is engaged in his professional activity in production of cinematography would only be called a film artist. An artist not associated with production of any film would not be called a 'film artist'. - *Jasminder Singh* v. *Addl. CIT* [2016] 50 ITR (Trib.) 460 (Lucknow). Stunt artist is not an actor - *Dy. CIT* v. *Movies Stunt Artists Assn.* [2006] 6 SOT 204 (Mum. - Trib.).

19. It is not open to assessing authority to desire some other books of account to be maintained over and above books of account required by rule 6F - *CIT* v. *Rajni Kant Dave* [2006] 150 Taxman 387 (All.). Requirement of rule 6F(3) do not apply to a company since a company cannot carry on profession - *ITO* v. *Ashalok Nursing Home (P.) Ltd.* [2006] 156 Taxman 86 (Delhi - Trib.)(Mag.).

20. Inserted by the IT (Fifth Amdt.) Rules, 1983, w.e.f. 28-2-1983.

profession or, where the profession is carried on in more places than one, at the principal place of his profession:

Provided that where the person keeps and maintains separate books of account in respect of each place where the profession is carried on, such books of account and other documents may be kept and maintained at the respective places at which the profession is carried on.

(5) The books of account and other documents specified in sub-rule (2) and sub-rule (3) shall be kept and maintained for a period of [21][six] years from the end of the relevant assessment year:

[22][***]

Provided [23][***] that where the assessment in relation to any assessment year has been reopened under section 147 of the Act within the period specified in section 149 of the Act, all the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has been completed.]

[24][(6) Notwithstanding anything contained in sub-rules (1) to (3), it shall not be necessary for any person carrying on any of the professions specified in sub-rule (1) to keep and maintain the books of account and other documents specified in sub-rule (2) or sub-rule (3) in relation to any previous year commencing before the [25][first day of March, 1983].]

[26][*CCC—Reports of audit of accounts of persons carrying on business or profession*

[27][Report of audit of accounts to be furnished under section 44AB.

6G. (1) The report of audit of the accounts of a person required to be furnished under section 44AB[28] shall,—

21. Substituted for "eight" by the IT (First Amdt.) Rules, 2002, w.e.f. 4-2-2002.
22. First proviso omitted, *ibid.*
23. "further" omitted, *ibid.*
24. Inserted by the IT (Second Amdt.) Rules, 1982, w.r.e.f. 21-11-1981.
25. Substituted for "first day of September, 1982" by the IT (Fifth Amdt.) Rules, 1983, w.e.f. 28-2-1983.
26. Inserted by the IT (Amdt.) Rules, 1985, w.e.f. 1-4-1985.
27. Substituted by the IT (Fourteenth Amdt.) Rules, 1999, w.e.f. 4-6-1999. Prior to its substitution, rule 6G, as inserted by the IT (Amdt.) Rules, 1985, w.e.f. 1-4-1985 and later on amended by the IT (Sixth Amdt.) Rules, 1985, w.e.f. 1-4-1985.
28. Section 44AB cannot be construed as superfluous—*A.S. Sarma* v. *Union of India* [1989] 175 ITR 254 (AP); *Abhay Kumar & Co.* v. *Union of India* [1987] 164 ITR 148 (Raj.). Prescribing different dates for companies and other assessees is not discriminatory.—*N. Vinodkumar & Co.* v. *Union of India* [1999] 237 ITR 502 (Kar.). Expression 'accounts', used in section 142(2A) or under section 44AB, does not mean merely books of account of assessee, but it could include books of account, balance sheets and all other records maintained by assessee, irrespective of fact whether accounts maintained by assessee may or may not be in such form or manner or system as prescribed under section 44AA - *S.J. Agarwal & Co.* v. *ITO* [2008] 114 ITD 27 (Pune - Trib.). Non-inclusion of income-tax practitioners for auditing accounts is not violative of article 19 of the Constitution - *T.D. Venkata Rao* v. *Union of India* [1999] 103 Taxman 621/237 ITR 315 (SC).

(Contd. on p. 1.111)

(*a*) in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;

(*b*) in the case of a person who carries on business or profession, but not being a person referred to in clause (*a*), be in Form No. 3CB.

(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.]

[29][*CCCA.—Report of audit in case of income by way of royalties, etc., in case of non-residents*

Form of report of audit to be furnished under sub-section (2) of section 44DA.

6GA. The report of audit of accounts of the non-resident (not being a company) or a foreign company, which is required to be furnished under sub-section (2) of section 44DA shall be in Form No. 3CE.]

[30][*CCCC.—Report in the case of slump sale*

Form of report of an accountant under sub-section (3) of section 50B.

6H. The report of an accountant which is required to be furnished by every assessee along with the return of income, in case of slump sale, under sub-section (3) of section 50B shall be in Form No. 3CEA.]

D.—Special cases

[31]**Income which is partially agricultural and partially from business.**

7. (1) In the case of income which is partially agricultural income as defined in section 2 and partially income chargeable to income-tax under the head "Profits and gains of business", in determining that part which is chargeable to income-tax the market value of any agricultural produce which has been raised by the assessee

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(*Contd. from p. 1.110*)

Non-filing of audit report is a curable defect under section 139(9) of the Act - *M.P. State Agro Industries Development Corporation Ltd.* v. *CIT* [2003] 183 CTR (MP) 33. In case of an individual carrying on business as a sole proprietor it is necessary to comply with provisions of section 44AB only in respect of his business income; it would not be necessary to comply with provisions of section 44AB in respect of his other income - *Ghai Construction* v. *State of Maharashtra* [2009] 184 Taxman 52 (Bom.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

29. Inserted by the IT (Twenty-seventh Amdt.) Rules, 2003, w.e.f. 20-11-2003.

30. Heading "CCCC", consisting of rule 6H, inserted by the IT (Twenty-first Amdt.) Rules, 1999, w.e.f. 25-6-1999.

31. *See* section 295(2)(*b*)(*i*).

'Market' in the context of rule 7 does not mean an open market where buyers and sellers get together for the purchase and sale of goods. The existence of such a market is not a pre-requisite for determination of market value. If the agricultural produce is ordinarily sold in the market, rule 7(2)(*a*) will apply; if not, rule 7(2)(*b*) will apply - *Thiru Arooran Sugars Ltd.* v. *CIT* [1997] 93 Taxman 579/227 ITR 432 (SC). Additional price of sugarcane pursuant to revision in prices is deductible in year in which liability arose - *Instruction No. 745, dated 30-8-1974*. Overhead expenses like salaries, provident fund, etc., are deductible in full - *CIT* v. *Bhopal Sugar Industries Ltd.* [1970] 78 ITR 209 (MP). Where agricultural produce is

(*Contd. on p. 1.112*)

or received by him as rent-in-kind and which has been utilised as a raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be :—

(*a*) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the relevant previous year;

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state or after application to it of any process aforesaid, the aggregate of—

(*i*) the expenses of cultivation;

(*ii*) the land revenue or rent paid for the area in which it was grown; and

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(Contd. from p. 1.111)

captively consumed, deduction towards market value cannot be denied merely because there was no sale of raw material and separate accounts had been maintained for agricultural production - *Nizam Sugar Factory Ltd.* v. *AAC* [1971] 80 ITR 547 (AP). If sugarcane as a produce is ordinarily saleable in the market, its nature cannot change because of the Sugarcane Control Order and, hence, only rule 7(2)(*a*) and not rule 7(2)(*b*) will apply to sugarcane - *CIT* v. *Thiru Arooran Sugars Ltd.* [1983] 144 ITR 4 (Mad.), *affirmed* in *Thiru Arooran Sugars Ltd.* v. *CIT* [1997] 93 Taxman 579/227 ITR 432 (SC). Market price must be one nearest to the factory of the manufacturer, and cannot be fixed by some sugarcane manufacturers association - *Walchandnagar Industries Ltd.* v. *CIT* [1970] 76 ITR 478 (Bom.). Where Government has fixed a general price for sugarcane, that price cannot be ignored in favour of any other price established by assessee with evidence - *CIT* v. *Bhopal Sugar Industries Ltd.* [1963] 47 ITR 859 (MP). Additional price paid in pursuance of Sugarcane Control Order is deductible - *CIT* v. *Janki Sugar Mills Co. Ltd.* [1972] 84 ITR 348 (All.). No part of managing agency commission is disallowable when managed company carries on the cultivation of sugarcane and manufacture of sugar as a single indivisible business - *CIT* v. *Maharashtra Sugar Mills Ltd.* [1971] 82 ITR 452 (SC)/ *Walchandnagar Industries Ltd.* v. *CIT* [1970] 76 ITR 478 (Bom.)/ *CIT* v. *Chillidhary Tea Co. Ltd.* [1983] 141 ITR 517 (Cal.). Where cultivation of sugarcane and manufacture of sugar was carried on as a composite indivisible business, and overhead expenses could not be apportioned as between the two activities, no portion of such expenses could be disallowed - *CIT* v. *Bhopal Sugar Industries Ltd.* [1970] 78 ITR 209 (MP)/ *Addl. CIT* v. *Nizam Sugar Factory* [1981] 127 ITR 423 (AP). Transportation charges incurred for bringing sugarcane from own fields to factory are not disallowable under rule 7 - *CIT* v. *Nizam Sugar Factory Ltd. (No. 2)* [1979] 116 ITR 706 (AP). 'Average price' under rule 7(2)(*a*) means the average of the prices paid at the centre where sugarcane is supplied. Rebate for transport charges allowed by Government is not deductible - *Bhopal Sugar Industries Ltd.* v. *CIT* [1968] 70 ITR 403 (MP). Where assessee has an out-centre and also its own farms, the difference between the price fixed by Government for the out-centre and that fixed at the factory gate should be disallowed, and nothing more - *CIT* v. *Ganesh Sugar Mills Ltd.* [1986] 161 ITR 540 (Cal.). Where assessee-manufacturer had, in addition to sugarcane produced by it, purchased sugarcane from outside, the price at which sugarcane was purchased could not form the basis for determining the price of self-produced sugarcane - *Godavari Sugar Mills Ltd.* v. *CIT* [1978] 112 ITR 205 (Bom.).

For allowability of harvesting & transportation expenses in case of Cooperative Sugar Mills - *See* Circular No. 6/2007, dated 11-10-2007.

For details, *see* Taxmann's Master Guide to Income-tax Rules.

(*iii*) such amount as the [32][Assessing Officer] finds, having regard to all the circumstances in each case, to represent a reasonable profit.

[33][**Income from the manufacture of rubber.**[34]

7A. [35][(1) Income derived from the sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, remilled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India shall be computed as if it were income derived from business, and thirty-five per cent of such income shall be deemed to be income liable to tax.]

(2) In computing such income, an allowance shall be made in respect of the cost of planting rubber plants in replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (*31*) of section 10, is not includible in the total income.

Income from the manufacture of coffee.[34]

7B. [36][(1) Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and twenty-five per cent of such income shall be deemed to be income liable to tax.

(1A) Income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

Explanation.—For the purposes of sub-rules (1) and (1A) "curing" shall have the same meaning as assigned to it in clause (*d*) of section 3 of the Coffee Act, 1942 (7 of 1942)[37].]

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32. Substituted for "Income-tax Officer" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.
33. Rules 7A and 7B inserted by the IT (Second Amdt.) Rules, 2001, w.e.f. 1-4-2002 (*i.e.*, assessment year 2002-03 and onwards).
34. Past assessments (*i.e.*, prior to assessment year 2002-03) will not be reopened if the assessees had already paid agricultural income-tax on the whole income from manufacture of rubber or coffee - Circular No. 5 of 2003, dated 22-5-2003. *See* also Circular No. 10/2003, dated 24-12-2003 and Circular No. 10/2006, dated 16-10-2006 [clarification regarding filing of return of income by coffee growers, being individuals covered by rule 7B]. For details, *see* Taxmann's Master Guide to Income-tax Rules.
35. Substituted by the IT (Third Amdt.) Rules, 2002, w.e.f. 1-4-2003. Prior to its substitution, it read as under :
"(1) Income derived from the sale of centrifuged latex or cenex manufactured from rubber plants grown by the seller in India shall be computed as if it were income derived from business, and thirty-five per cent of such income shall be deemed to be income liable to tax."
36 Sub-rules (1) and (1A) substituted for sub-rule (1) by the IT (Eleventh Amdt.) Rules, 2002, w.e.f. 1-4-2002. Prior to its substitution, sub-rule (1) read as under :
"(1) Income derived from the sale of coffee grown and manufactured by the seller in India, with or without mixing of chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax."
37. For definition of "curing", as given in section 3(*d*) of the Coffee Act, 1942, *see* **Appendix.**

(2) In computing [38][the incomes referred to in sub-rules (1) and (1A)], an allowance shall be made in respect of the cost of planting coffee plants in replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (*31*) of section 10, is not includible in the total income.]

[39]**Income from the manufacture of tea.**

8. (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned [40][, and for the purpose of determining such cost, no deduction shall be made in

38. Substituted for "such income" by the IT (Eleventh Amdt.) Rules, 2002, w.e.f. 1-4-2002.

39. *See* section 295(2)(*b*)(*i*).
Rule 8 is not *ultra vires* section 295—*Tata Tea Ltd.* v. *State of West Bengal* [1988] 173 ITR 18 (SC). Decision in *CST* v. *D.S. Bist & Sons* AIR 1980 SC 169 has no bearing, and income from tea grown and sold in India will continue to be computed under rule 8 - *Circular No. 310, dated 29-7-1981*. Rule 8 will apply only to a seller who has himself grown and manufactured tea—*CIT* v. *Khan Bahadur Waliur Rahman* [1946] 14 ITR 287 (Cal.). State Legislature cannot deny any deduction admissible under the IT Act/Rules—*Karimtharuvi Tea Estates Ltd.* v. *State of Kerala* [1963] 48 ITR 83 (SC). AITO is bound to accept assessment made by the ITO—*Anglo-American Direct Tea Trading Co. Ltd.* v. *CAIT* [1968] 69 ITR 667 (SC)/*Bhagavandas Narayandas* v. *AITO* [1968] 70 ITR 128 (Mad.). Computation of agricultural income even for the purpose of the State enactments will have to be that which is made under the provisions of the Income-tax Act and Rules made thereunder - *Assam Co. Ltd.* v. *State of Assam* [2001] 248 ITR 567 (SC). It is not correct to say that rule 8 is applicable only in case of income - *Hindustan Unilever Ltd.* v. *Dy. CIT* [2010] 191 Taxman 119 (Bom.). Percentage must be applied on the chargeable income, *i.e.*, after allowing deductions under Chapter VI-A—*CAIT* v. *Periakaramalai Tea & Produce Co. Ltd.* [1972] 84 ITR 643 (Mad.). Salary/Interest paid to partner by a firm engaged in growing and selling tea is also taxable to the extent of 40 per cent of such salary/interest - *CIT* v. *R.M. Chidambaram Pillai* [1977] 106 ITR 292 (SC)/*CIT* v. *Amsoi Tea Estate* [1978] 112 ITR 234 (Gauhati)(FB). It is not necessary that both basic operations and subsequent operations must be carried on by one and the same person—*Havakkal Estate Co.* v. *CIT* [1977] 109 ITR 59 (Mad.). Rule is not applicable to income which has no relation to tea business (like income from investments)—*Sookerating Tea Co. (P.) Ltd.* v. *CIT* [1978] 111 ITR 457 (Gauhati). Where tea business is leased out to another party for management, only 40 per cent of lease income is assessable to income-tax—*CIT* v. *Haroocharai Tea Co.* [1978] 111 ITR 495 (Gauhati). Where it was found that assessee's activities of raising/selling tea and of raising paddy and other crops on the fallow land for the time being constituted an indivisible business, no part of the indirect expenses was disallowable—*CIT* v. *Chillidhary Tea Co. Ltd.* [1983] 141 ITR 517 (Cal.). Maintenance of nursery for purpose of raising bushes to be utilized for replantation of dead or useless bushes within plantation area does not come under rule 8(2) - *CIT* v. *Tasati Tea Ltd.* [2003] 129 Taxman 647/262 ITR 388 (Cal.). In case of assessee growing and manufacturing tea in Darjeeling, income from 'tea grown and manufactured' would be assessed by Assessing Officer under the 1961 Act and thereafter 40 per cent of such assessed income would be taxed under the 1961 Act and balance 60 per cent would be taxed under Bengal Agricultural Income-tax Act, 1944 by Agricultural Income-tax Officer; in case assessee directly sells green tea leaves resulting in an income from agricultural products, it cannot be taken as incidental income to business and whatever income is derived from sale of green tea

(Contd. on p. 1.115)

respect of the amount of any subsidy which, under the provisions of clause (*30*) of section 10, is not includible in the total income.]

[41][**Conditions for the grant of development allowance.**

8A. The other conditions referred to in clause (*iii*) of sub-section (3) of section 33A shall be the following, namely:—

(*a*) the assessee shall, at least three months before commencing the operations for planting or, as the case may be, replanting tea bushes, give notice of his intention to do so to the Tea Board in writing in Form No. 4:

Provided that in a case where such operations have commenced before the [42][1st day of January, 1968], this condition shall be deemed to have been fulfilled if notice of such commencement is given by the assessee before the [43][1st day of February, 1968];

(*b*) the assessee shall afford the Tea Board or such other person or agency as may be authorised in writing by the Tea Board in this behalf, every reasonable facility to enter upon and inspect the area under planting or, as the case may be, replanting;

(*c*) the assessee shall furnish to the Tea Board such particulars, documents or statements, in relation to the planting or replanting of tea, as the Tea Board may require him to furnish;

(*d*) the assessee shall furnish to the [44][Assessing Officer], along with his return of income for the previous year for which the deduction is claimed, a certificate from the Tea Board in Form No. 5 [45][and a statement of particulars in Form No. 5A].

Explanation.—For the purposes of this rule, "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).]

[46][**Method of determination of period of holding of capital assets in certain cases.**

8AA. (1) The period for which any capital asset, other than the capital assets mentioned in clause (*i*) of the *Explanation 1* to clause (*42A*) of section 2 of the Act, is held by an assessee, shall be determined in accordance with the provisions of this rule.

(2) In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in clause (*x*) of section 47 of the Act, there shall be included the period for which the bond,

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(Contd. from p. 1.114)

leaves will be assessed by Agricultural Income-tax Officer under 1944 Act and not under 1961 Act - *Union of India* v. *Belgachi Tea Co. Ltd.* [2008] 170 Taxman 209/304 ITR 1 (SC). Receipts of premium on import licence, sale of scrap, miscellaneous garden income and excise duty having direct nexus with assessee's activities of growing, manufacturing and selling of tea should be treated as assessee's composite income before apportionment thereof in terms of rule 8 - *McLeod Russel India Ltd.* v. *CIT* [2013] 38 taxmann.com 273/218 Taxman 139 (Mag.) (Gau.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

40. Inserted by the IT (Second Amdt.) Rules, 1971.
41. Inserted by the IT (Fourth Amdt.) Rules, 1967, w.e.f. 1-4-1967. *See CIT* v. *Malayalam Plantations Ltd.* [1976] 103 ITR 835 (Ker.) on filing of certificate under this rule.
42. Substituted for "1st day of August, 1967" by the IT (Third Amdt.) Rules, 1968, w.r.e.f. 1-4-1967.
43. Substituted for "1st day of September, 1967", *ibid.*
44. Substituted for "Income-tax Officer" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.
45. Inserted by the IT (Amdt.) Rules, 1968, w.e.f. 1-4-1968.
46. Inserted by the IT (Sixth Amdt.) Rules, 2016, w.e.f. 1-4-2016.

debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.]

[47][(3) In the case of a capital asset, declared under the Income Declaration Scheme, 2016,—

(*i*) being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government; and

(*ii*) in any other case, the period for which such asset is held shall be reckoned from the 1st day of June, 2016.]

[48][(4) In the case of a capital asset which became the property of the Indian subsidiary company in consequence to conversion of a branch of a foreign company referred to in sub-section (1) of section 115JG, there shall be included the period for which the asset was held by the said branch of the foreign company and by the previous owner, if any, who has acquired the capital asset by a mode of acquisition referred to in clause (*i*) or clause (*ii*) or clause (*iii*) or clause (*iv*) of sub-section (1) of section 49 or sub-section (1) of section 115JG.]

[49]**[Guidelines for notification of zero coupon bond.**

8B. (1) An application by an infrastructure capital company or infrastructure capital fund or a public sector company for notification under clause (*48*) of section 2 of any zero coupon bond proposed to be issued by it shall be made in Form No. 5B at least three months before the date of issue of such bond:

Provided that an application shall not be made for notification of a bond to be issued after two financial years following the financial year in which the application is made.

(2) Every application, under sub-rule (1), shall be accompanied by the following documents, namely:—

(*i*) where the application is made by any infrastructure capital company or a public sector company, being a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), a copy of certificate of incorporation under the Companies Act, 1956 (1 of 1956);

(*ii*) where the application is made by any infrastructure capital fund, a copy of the trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908);

(*iii*) where the application is made by a public sector company, being any corporation, established by or under any Central or State or Provincial Act, a copy of the relevant Act.

(3) The Central Government, while specifying a zero coupon bond by notification in the Official Gazette shall satisfy itself that the following conditions are fulfilled, namely:—

(*i*) the period of life of the bond is not less than ten years and not more than twenty years;

(*ii*) the infrastructure capital company or infrastructure capital fund or public sector company proposing to issue a zero coupon bond has an

47. Inserted by the IT (Thirty-fourth Amdt.) Rules, 2016, w.r.e.f. 1-6-2016.

48. Inserted by the IT (Thirteenth Amdt.) Rules, 2018, w.e.f. 6-12-2018.

49. Inserted by the IT (Third Amdt.) Rules, 2006, w.e.f. 1-4-2006. *See* notified Zero Coupon Bonds, *see* Taxmann's Master Guide to Income-tax Rules.

investment grade rating from at least two credit rating agencies registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*iii*) necessary arrangement has been made by the infrastructure capital company or infrastructure capital fund or public sector company for listing the zero coupon bond in a recognised stock exchange in India;

(*iv*) where the application is made by the infrastructure capital company or infrastructure capital fund, such company or fund shall furnish along with the application an undertaking that the money realised on issue of the zero coupon bond shall be invested by it in the following manner, namely:—

(*i*) twenty-five per cent or more of such realisation before the end of the financial year immediately following the financial year in which the bond is issued;

(*ii*) the balance of such realisation within a period of four financial years immediately following the financial year in which the bond is issued;

(*v*) where the application is made by a public sector company, such company shall furnish along with the application an undertaking that the money realised on issue of the zero coupon bond shall be invested or utilised by it in the following manner, namely:—

(*i*) fifteen per cent or more of such realisation before the end of the financial year immediately following the financial year in which the bond is issued;

(*ii*) the balance of such realisation within a period of six financial years immediately following the financial year in which the bond is issued.

(4) The Central Government, after having satisfied itself about fulfilling of the conditions referred to in sub-rule (1), sub-rule (2) and sub-rule (3) shall specify the bond, by notification in the Official Gazette, giving therein, *inter alia*, the following particulars, namely:—

(*a*) name of the bond;

(*b*) period of life of the bond;

(*c*) the time schedule of the issue of the bond;

(*d*) the amount to be paid on maturity or redemption of the bond;

(*e*) the discount;

(*f*) the number of bonds to be issued.

(5) The Central Government may, if the applicant fails to fulfil the conditions referred to in sub-rule (1) or sub-rule (2) or sub-rule (3), reject the application for notification after giving an opportunity of being heard to the infrastructure capital company or infrastructure capital fund or public sector company, as the case may be.

(6) Every infrastructure capital company or infrastructure capital fund or public sector company shall submit within two months from the end of each financial year referred to in sub-clause (*i*) or sub-clause (*ii*) of clause (*iv*) of sub-rule (3), or, as the case may be, in sub-clause (*i*) or sub-clause (*ii*) of clause (*v*) of sub-rule (3), a certificate from an accountant as defined in the *Explanation* to sub-section (2) of section 288, specifying the amount invested in each year.

(7) The Central Government shall have the power to withdraw the notification if the applicant fails to fulfil any of the conditions referred to in sub-rule (3) or sub-rule (6).

Explanation.—For the purpose of this rule, the expressions "discount" and "period of life of the bond" shall have the same meanings respectively assigned to them in clause (*i*) and clause (*ii*) of the *Explanation* to clause (*iiia*) of sub-section (1) of section 36.

Computation of pro rata amount of discount on a zero coupon bond for the purpose of clause (iiia) of sub-section (1) of section 36.

8C. For the purposes of clause (*iiia*) of sub-section (1) of section 36, the *pro rata* amount of discount on a zero coupon bond shall be computed in the following manner, namely:—

(*a*) the period of life of the bond shall be converted into number of calendar months and, for this purpose, where the calendar month in which the bond is issued or the bond matures or is redeemed contains a part of a calendar month then, if such part is fifteen days or more than fifteen days, it shall be increased to one calendar month and if such part is less than fifteen days it shall be ignored;

(*b*) the amount of discount shall be divided by the number of calendar months determined in accordance with clause (*a*);

(*c*) where one or more than one calendar month out of calendar months determined in accordance with clause (*a*) is or are included in a previous year, the amount determined in accordance with clause (*b*) shall be multiplied by the number of calendar months so included and the amount so arrived at shall be taken to be the *pro rata* amount of discount for that previous year.]

[50][**Method for determining amount of expenditure in relation to income not includible in total income.**

8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(*a*) the correctness of the claim of expenditure made by the assessee; or

(*b*) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

[51][(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

(*i*) the amount of expenditure directly relating to income which does not form part of total income; and

50. Inserted by the IT (Fifth Amdt.) Rules, 2008, w.e.f. 24-3-2008. *See* also Circular No. 5/2014, dated 11-2-2014 [Clarification regarding disallowance of expenses under section 14A in cases where corresponding exempt income has not been earned during the financial year] - For details, *see* Taxmann's Master Guide to Income-tax Rules.

51. Substituted by the IT (Fourteenth Amdt.) Rules, 2016, w.e.f. 2-6-2016. Prior to its substitution, sub-rule (2) read as under :

"(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :—

(*i*) the amount of expenditure directly relating to income which does not form part of total income;

(*ii*) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :—

(Contd. on p. 1115

(*ii*) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (*i*) and clause (*ii*) shall not exceed the total expenditure claimed by the assessee.]

(3) [52][***]]

Royalties or copyright fees, etc., for literary or artistic work.

9. (1) Where a claim for an allocation is or has been made under section 12AA of the Indian Income-tax Act, 1922 (11 of 1922), in respect of the amount referred to in that section, it shall be dealt with in the following manner, namely:—

(*i*) where the time taken by the author of the literary or artistic work in the making thereof is more than twelve but less than twenty-four months, one-half of the amount referred to in the said section shall be included in the total income of the previous year in which the whole amount is received or receivable, and the other half in the total income of the next succeeding previous year; and

(*ii*) where the time so taken is twenty-four months or more, one-third of the amount referred to in the said section shall be included in the total income of the previous year in which the whole amount is received or receivable and one-third of the said amount in the total income of each of the two next succeeding previous years.

[53](2) Where a claim for an allocation is made by an assessee under section 180[54] for the assessment year 1962-63 or any subsequent assessment year, it shall be dealt with in the following manner, namely:—

(Contd. from p. 1.118)

$$A \times \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (*i*) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(*iii*) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

52. Omitted by the IT (Fourteenth Amdt.) Rules, 2016, w.e.f. 2-6-2016. Prior to its omission, sub-rule (3) read as under :

'(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.'

53. *See* section 295(2)(*f*).

54. Section 180 is not applicable in relation to previous year(s) relevant to assessment year(s) commencing on or after 1-4-2000.

(*i*) the tax for the assessment year relevant to the previous year in which the whole amount is received or receivable shall be—

(*a*) the amount of tax payable on the total income as reduced by two-thirds of the amount referred to in section 180 included in the total income of the previous year aforesaid had the total income so reduced been his total income; *plus*

(*b*) the tax on an amount equal to two-thirds of the amount referred to in section 180 included in the total income of the previous year aforesaid at the rate applicable to a total income of an amount equal to one-third of such inclusion; and

(*ii*) one-third of the amount referred to in section 180 included in the total income of the previous year aforesaid shall be included in the total income of each of the two next succeeding previous years and the tax payable, if any, in respect of each of the assessments relevant to the two said succeeding previous years shall be reduced by an amount equal to one-half of the tax referred to in sub-clause (*b*) of clause (*i*).

[55][56]**Deduction in respect of expenditure on production of feature films**[57].

9A. [58][(1) In computing the profits and gains of the business of production of feature films carried on by a person (the person carrying on such business hereafter in this rule referred to as film producer), the deduction in respect of the cost of

55. Inserted by the IT (Seventh Amdt.) Rules, 1976. Rule 9A is not *ultra vires* the provisions of the Act - *V. Varghese* v. *Dy. CIT (No. 2)* [1994] 210 ITR 526 (Kar.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

56. *See* section 295(2)(*a*).

57. Subsidy received by producers of regional feature films should not be treated as revenue receipt—*see* Circular No. 541, dated 25-7-1989 as amended by Circular No. 544, dated 15-9-1989. [Now *see* section 2(*24*)(*xviii*)] Non-applicability of rule 9A in case of Abandoned Feature Films (Circular No. 16/2015, dated 6-10-2015). Post-production expenses are not includible - *CIT* v. *Prasad Productions (P.) Ltd.* [1989] 76 CTR (Mad.) 173. Maintenance of books of account under rule 9A(5) is mandatory for seeking deduction - *LN Poddar* v. *ITAT* [2010] 322 ITR 513 (Pat.). Where assessee's claim relates to exhibition of old movies, assessee's claim for deduction would fall for consideration only under rule 9B and not under rule 9A - *Madathil Bros.* v. *Dy. CIT* [2008] 301 ITR 345 (Mad.). *See* also *CIT* v. *Joseph Valakuzhy* [2008] 170 Taxman 196/302 ITR 190 (SC). Where assessee was not a film producer but only a film distributor, in respect of films claim of cost of acquisition would come only under rule 9B(4) as against claim of assessee that it would come under rule 9A(6) - *A.M. Rathnam* v. *Dy. CIT* [2007] 292 ITR 126 (Mad.). It cannot be said that rule 9A has no application where film is intended to be sold to TV Channels only and not meant for theatrical release - *Vieshesh Films (P.) Ltd.* v. *Dy. CIT* [2008] 26 SOT 64 (Mum. - Trib.). Cost of production of film can be allowed as deduction only when conditions as specified under rule 9A are satisfied - *Sagar Sardhadi* v. *ITO* [2012] 18 taxmann.com 348/135 ITD 153 (Mum.-Trib.). Where assessee engaged in production of movies borrowed loan for production of movies, interest attributable to borrowings utilized in production of film would be added to cost of production for being allowed under rule 9A - *Asstt. CIT* v. *Akkineni Nagarjuna Rao* [2012] 22 taxmann.com 69/52 SOT 23 (URO) (Hyd. - Trib.). Where assessee had neither himself exhibited feature film on commercial basis nor sold rights of exhibits nor transferred rights of exhibits of feature film, claim of deduction was hit by sub-rule (5) of rule 9A and could not be allowed under sub-rule (4) of rule 9A - *Sagar Sardhadi* v. *ITO* [2012] 18 taxmann.com 348/135 ITD 153 (Mum. - Trib.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

58. Substituted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

production of a feature film certified for release by the Board of Film Censors in a previous year shall be allowed in accordance with the provisions of sub-rule (2) to sub-rule (4).

Explanation : In this rule,—

(*i*) "Board of Film Censors" means the Board of Film Censors constituted under the Cinematograph Act, 1952 (37 of 1952);

(*ii*) "cost of production"[58a], in relation to a feature film, means the expenditure incurred on the production of the film, not being—

(*a*) the expenditure incurred for the preparation of the positive prints of the film; and

(*b*) the expenditure incurred in connection with the advertisement of the film after it is certified for release by the Board of Film Censors:]

[59][**Provided** that the cost of production of a feature film, shall be reduced by the subsidy received by the film producer under any scheme framed by the Government, where such amount of subsidy has not been included in computing the total income of the assessee for any assessment year.]

(2) Where a [60][***] feature film is certified for release by the Board of Film Censors in any previous year and in such previous year,—

(*a*) the film producer sells all rights of exhibition of the film, the entire cost of production of the film shall be allowed as a deduction in computing the profits and gains of such previous year; or

(*b*) the film producer—

(*i*) himself exhibits the film on a commercial basis in all or some of the areas; or

(*ii*) sells the rights of exhibition of the film in respect of some of the areas; or

(*iii*) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is released for exhibition on a commercial basis at least [61][ninety] days before the end of such previous year, the entire cost of production of the film shall be allowed as a deduction in computing the profits and gains of such previous year.

(3) Where a [62][***] feature film is certified for release by the Board of Film Censors in any previous year and in such previous year, the film producer—

58a. For meaning of words "Cost of production", *see CIT* v. *Dharma Productions (P.) Ltd.* [2019] 104 taxmann.com 211/263 Taxman 585 (Bom.).

59. Inserted by the IT (Seventh Amdt.) Rules, 1989, w.e.f. 7-7-1989.

60. Words "regional language" omitted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

61. Substituted for "one hundred and eighty" by the IT (Ninth Amdt.) Rules, 1998, w.e.f. 1-4-1999. Earlier "one hundred and eighty" was substituted for "ninety" by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

62. Words "regional language" omitted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

(*a*) himself exhibits the film on a commercial basis in all or some of the areas; or

(*b*) sells the rights of exhibition of the film in respect of some of the areas; or

(*c*) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is not released for exhibition on a commercial basis at least [63][ninety] days before the end of such previous year, the cost of production of the film in so far as it does not exceed the amount realised by the film producer by exhibiting the film on a commercial basis or the amount for which the rights of exhibition are sold or, as the case may be, the aggregate of the amounts realised by the film producer by exhibiting the film and by the sale of the rights of exhibition, shall be allowed as a deduction in computing the profits and gains of such previous year; and the balance, if any, shall be carried forward to the next following previous year and allowed as a deduction in that year.

(4) Where, during the previous year in which a [64][***] feature film is certified for release by the Board of Film Censors, the film producer does not himself exhibit the film on a commercial basis or does not sell the rights of exhibition of the film, no deduction shall be allowed in respect of the cost of production of the film in computing the profits and gains of such previous year; and the entire cost of production of the film shall be carried forward to the next following previous year and allowed as a deduction in that year.

[65][(5)] Notwithstanding anything contained in the foregoing provisions of this rule, the deduction under this rule shall not be allowed unless,—

(*a*) in a case where the film producer—

(*i*) has himself exhibited the feature film on a commercial basis; or

(*ii*) has sold the rights of exhibition of the feature film; or

[66][(*iii*) has himself exhibited the feature film on a commercial basis in some areas and has sold the rights of exhibition of the feature film in respect of all or some of the remaining areas,]

the amount realised by exhibiting the film, or the amount for which the rights of exhibition have been sold or, as the case may be, the aggregate of such amounts, is credited in the books of account maintained by him in respect of the year in which the deduction is admissible;

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63. Substituted for "one hundred and eighty" by the IT (Ninth Amdt.) Rules, 1998, w.e.f. 1-4-1999. Earlier "one hundred and eighty" was substituted for "ninety" by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
64. Words "regional language" omitted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
65. Renumbered as a result of omission of sub-rule (5), *ibid.*
66. Substituted, *ibid.*

(*b*) in a case where the film producer has transferred the rights of exhibition of the feature film on a minimum guarantee basis, the minimum amount guaranteed and the amount, if any, received or due in excess of the guaranteed amount or where the film producer follows cash system of accounting, the amount received towards the minimum guarantee and the amount, if any, received in excess of the guaranteed amount, are credited in the books of account maintained by him in respect of the year in which the deduction is admissible.

[67][(6)] Where the [68][Assessing Officer] is of opinion that—

[69][(*a*)] the rights of exhibition of the feature film have been transferred by the film producer by a mode not covered by the provisions of this rule; or

[69][(*b*)] having regard to the facts and circumstances of any case, it is not practicable to apply the provisions of this rule to such case,

deduction in respect of the cost of production of the film may be allowed by the [70][Assessing Officer] in such other manner as he may deem suitable.

[71][(7)] For the purposes of this rule,—

(*i*) the sale of the rights of exhibition of a feature film includes the lease of such rights or their transfer on a minimum guarantee basis;

(*ii*) the rights of exhibition of a feature film shall be deemed to have been sold only on the date when the positive prints of the film are delivered by the film producer to the purchaser of such rights or where in terms of the agreement between the film producer and the film distributor as defined in rule 9B, the positive prints are to be made by the film distributor, the date on which the negative of the film is delivered by the film producer to the film distributor.

[71][(8)] [72][Nothing contained in this rule shall apply in relation to any assessment year commencing before the 1st day of April, 1987.]

[73][***]

[74][[75]**Deduction in respect of expenditure on acquisition of distribution rights of feature films.**

9B. (1) In computing the profits and gains of the business of distribution of feature films carried on by a person (the person carrying on such business hereafter

67. Renumbered as a result of omission of sub-rule (6) by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
68. Substituted for "Income-tax Officer" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.
69. Relettered as a result of omission of clause (*a*) by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
70. Substituted for "Income-tax Officer" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.
71. Renumbered as a result of omission of sub-rule (7) by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
72. Substituted, *ibid.*
73. The Table and *Explanations 1* and *2* omitted, *ibid.*

(Contd. on p. 1.124

in this rule referred to as film distributor), the deduction in respect of the cost of acquisition of a feature film shall be allowed in accordance with sub-rule (2) to sub-rule (4).

Explanation.—For the purposes of this rule, "cost of acquisition", in relation to a feature film, means the amount paid [76][by the film distributor to the film producer or to another distributor under an agreement entered into by the film distributor with such film producer or such other distributor, as the case may be] for acquiring the rights of exhibition and, where the rights of exhibition have been acquired on a minimum guarantee basis, the minimum amount guaranteed, not being—

(*i*) the amount of expenditure incurred by the film distributor for the preparation of the positive prints of the film; and

(*ii*) the expenditure incurred by him in connection with the advertisement of the film.

(2) Where a feature film is acquired by the film distributor in any previous year and in such previous year—

(*a*) the film distributor sells all rights of exhibition of the film, the entire cost of acquisition of the film shall be allowed as a deduction in computing the profits and gains of such previous year; or

(*b*) the film distributor,—

(*i*) himself exhibits the film on a commercial basis in all or some of the areas; or

(*ii*) sells the rights of exhibition of the film in respect of some of the areas; or

(*iii*) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is released for exhibition on a commercial basis at least [77][ninety] days before the end of such previous year, the entire cost of acquisition of the film shall be allowed as a deduction in computing the profits and gains of such previous year.

(3) Where a feature film is acquired by the film distributor in any previous year and in such previous year the film distributor—

(*a*) himself exhibits the film on a commercial basis in all or some of the areas; or

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(Contd. from p. 1.123)

74. Inserted by the IT (Seventh Amdt.) Rules, 1976.

75. *See* section 295(2)(*a*). For relevant case laws, *see* Taxmann's Master Guide to Income-tax Rules.

76. Substituted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

77. Substituted for "one hundred and eighty" by the IT (Ninth Amdt.) Rules, 1998, w.e.f. 1-4-1999. Earlier "one hundred and eighty" was substituted for "ninety" by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

(*b*) sells the rights of exhibition of the film in respect of some of the areas; or

(*c*) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is not released for exhibition on a commercial basis at least [77a][ninety] days before the end of such previous year, the cost of acquisition of the film in so far as it does not exceed the amount realised by the film distributor by exhibiting the film on a commercial basis or the amount for which the rights of exhibition have been sold or, as the case may be, the aggregate of the amounts realised by the film distributor by exhibiting the film and by the sale of the rights of exhibition, shall be allowed as a deduction in computing the profits and gains of such previous year; and the balance, if any, shall be carried forward to the next following previous year and allowed as a deduction in that year.

(4) Where during the previous year in which a feature film is acquired by the film distributor, he does not himself exhibit the film on a commercial basis or does not sell the rights of exhibition of the film, no deduction shall be allowed in respect of the cost of acquisition of the film in computing the profits and gains of such previous year; and the entire cost of acquisition shall be carried forward to the next following previous year and allowed as a deduction in that year.

(5) Notwithstanding anything contained in the foregoing provisions of this rule, the deduction under this rule shall not be allowed unless—

(*a*) in a case where the film distributor,—

(*i*) has himself exhibited the feature film on a commercial basis; or

(*ii*) has sold the rights of exhibition of the feature film; or

(*iii*) has himself exhibited the feature film on a commercial basis in some areas and has sold the rights of exhibition of the feature film in respect of all or some of the remaining areas,

the amount realised by exhibiting the film, or the amount for which the rights of exhibition have been sold, or, as the case may be, the aggregate of such amounts, is credited in the books of account maintained by him in respect of the year in which the deduction is admissible ;

(*b*) in a case where the film distributor has transferred the rights of exhibition of the feature film on a minimum guarantee basis, the minimum amount guaranteed and the amount, if any, received or due in excess of the guaranteed amount, or where the film distributor follows cash system of accounting, the amount received towards the minimum guarantee and the amount, if any, received in excess of the

77a. Substituted for "one hundred and eighty" by the IT (Ninth Amdt.) Rules, 1998, w.e.f. 1-4-1999. Earlier "one hundred and eighty" was substituted for "ninety" by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.

guaranteed amount, are credited in the books of account maintained by him in respect of the year in which the deduction is admissible.

(6) For the purposes of this rule,—

(*i*) the sale of the rights of exhibition of a feature film includes the lease of such rights or their transfer on a minimum guarantee basis ;

(*ii*) the rights of exhibition of a feature film shall be deemed to have been sold only on the date when the positive prints of the film are delivered by the film distributor to the purchaser of such rights ;

[78][(*iii*) distributor shall include a sub-distributor.]

[79][(7) Nothing contained in this rule shall apply in relation to any assessment year commencing before the 1st day of April, 1987.]

[80][**Conditions for carrying forward or set-off of accumulated loss and unabsorbed depreciation allowance in case of amalgamation.**

9C. The conditions referred to in clause (*iii*) of sub-section (2) of section 72A shall be the following, namely :—

(*a*) the amalgamated company, owning an industrial undertaking of the amalgamating company by way of amalgamation, shall achieve the level of production of at least fifty per cent of the installed capacity of the said undertaking before the end of four years from the date of amalgamation and continue to maintain the said minimum level of production till the end of five years from the date of amalgamation :

Provided that the Central Government, on an application made by the amalgamated company, may relax the condition of achieving the level of production or the period during which the same is to be achieved or both in suitable cases having regard to the genuine efforts made by the amalgamated company to attain the prescribed level of production and the circumstances preventing such efforts from achieving the same;

(*b*) the amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous years falling within five years from the date of amalgamation.

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78. Inserted by the IT (Second Amdt.) Rules, 1986, w.e.f. 2-4-1986.
79. Substituted, *ibid.*
80. Inserted by the IT (Thirty-third Amdt.) Rules, 1999, w.e.f. 15-12-1999.

Explanation.—For the purposes of this rule,—

(*a*) "installed capacity" means the capacity of production existing on the date of amalgamation; and

(*b*) "accountant" means the accountant as defined in the *Explanation* below sub-section (2) of section 288 of the Income-tax Act, 1961.]

[81]Determination of income in the case of non-residents.

10. In any case in which the [82][Assessing Officer] is of opinion that the actual amount of the income accruing or arising to any non-resident person whether directly or indirectly, through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through or from any money lent at interest and brought into India in cash or in kind[83] cannot be definitely ascertained, the amount of such income for the purposes of assessment to income-tax [84][* * *] may be calculated :—

(*i*) at such percentage of the turnover so accruing or arising as the [82][Assessing Officer] may consider to be reasonable, or

(*ii*) on any amount which bears the same proportion to the total profits and gains of the business of such person (such profits and gains being computed in accordance with the provisions of the Act), as the receipts so accruing or arising bear to the total receipts of the business, or

(*iii*) in such other manner as the [82][Assessing Officer] may deem suitable.

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81. *See* sections 9, 92 and 295(2)(*b*)(*ii*).
Once a particular method has been chosen by Assessing Officer, reassessment for choosing a better method is not permissible - *CIT* v. *Simon Carves Ltd.* [1976] 105 ITR 212 (SC). Apportionment of profits should be rational and not arbitrary - *Annamalais Timber Trust & Co.* v. *CIT* [1961] 41 ITR 781 (Mad.). Court will not interfere if Assessing Officer has made a fair estimate - *Hukumchand Mills Ltd.* v. *CIT* [1968] 70 ITR 450 (Bom.)/ *CIT* v. *Mewar Textile Mills Ltd.* [1966] 60 ITR 423 (SC). Even if estimate is based on guesswork, court might not interfere if assessee has not placed proper material justifying a more definite and certain apportionment - *Blue Star Engg. Co. (Bombay) (P.) Ltd.* v. *CIT* [1969] 73 ITR 283 (Bom.). Power to compute under third alternative is very wide - *Ellerman Lines Ltd.* v. *CIT* [1971] 82 ITR 913 (SC). Transactions unconnected with business must be ignored. Subvention payments by associate concerns must be excluded - *CIT* v. *Indian Textile Engineers (P.) Ltd.* [1983] 141 ITR 69 (Bom.). Destination earnings are part of Indian earnings - *CIT* v. *Ellerman Lines Ltd.* [1970] 75 ITR 47 (Cal.). Absence fee paid to foreign collaborator is income of foreign company - *CIT* v. *Yamatake Honeywell Co. Ltd.* [1994] 76 Taxman 26 (Raj.). In the computation of world income of shipping business, additions towards adjustments of foreign currency, compensation received on account of general average and interest earned on discount, are not excludible - *CIT* v. *Shinwa Kaiun Kaisha Ltd.* [1987] 165 ITR 270 (Cal.). While computing the income under second method, full depreciation must be allowed - *CIT* v. *Nandlal Bhandari Mills Ltd.* [1966] 60 ITR 173 (SC). Limitation on head office expenses under section 44AC cannot be applied - *CIT* v. *Saudi Arabian Airlines* [1985] 155 ITR 65 (Bom.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

82. Substituted for "Income-tax Officer" by the IT (Fifth Amdt.) Rules, 1989, w.r.e.f. 1-4-1988.

83. Words "or through or from any money lent at interest and brought into India in cash or in kind" were omitted from section 9 by the Finance Act, 1976, w.e.f. 1-6-1976. Rule 10 needs amendment in view of amendment made in section 9.

84. Words "and super-tax" omitted by the IT (Amdt.) Rules, 1967, w.e.f. 13-2-1967.

[85][**Meaning of expressions used in computation of arm's length price.**[86]

10A. For the purposes of this rule and rules [87][10AB] to 10E,—

[88][(*a*) "associated enterprise" shall,—

(*i*) have the same meaning as assigned to it in section 92A; and

(*ii*) in relation to a specified domestic transaction entered into by an assessee, include—

(*A*) the persons referred to in clause (*b*) of sub-section (2) of section 40A in respect of a transaction referred to in clause (*a*) of sub-section (2) of the said section;

(*B*) other units or undertakings or businesses of such assessee in respect of a transaction referred to in section 80A or, as the case may be, sub-section (8) of section 80-IA;

(*C*) any other person referred to in sub-section (10) of section 80-IA in respect of a transaction referred to therein;

(*D*) other units, undertakings, enterprises or business of such assessee, or other person referred to in sub-section (10) of section 80-IA, as the case may be, in respect of a transaction referred to in section 10AA or the transactions referred to in Chapter VI-A to which the provisions of sub-section (8) or, as the case may be, the provisions of sub-section (10) of section 80-IA are applicable;

(*aa*) "enterprise" shall have the same meaning as assigned to it in clause (*iii*) of section 92F and shall, for the purposes of a specified domestic transaction, include a unit, or an enterprise, or an undertaking or a business of a person who undertakes such transaction;]

[89][(*ab*)] "uncontrolled transaction" means a transaction between enterprises other than associated enterprises, whether resident or non-resident;

(*b*) "property" includes goods, articles or things, and intangible property;

(*c*) "services" include financial services;

(*d*) "transaction" includes a number of closely linked transactions.

[90][**Other method of determination of arm's length price.**

10AB. For the purposes of clause (*f*) of sub-section (1) of section 92C, the other method for determination of the arm's length price in relation to an international transaction [91][or a specified domestic transaction] shall be any method which takes into account the price which has been charged or paid, or

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85. Rules 10A to 10E inserted by the IT (Twenty-first Amdt.) Rules, 2001, w.e.f. 21-8-2001.
86. *See* relevant Departmental instructions and Case Laws analysis, *see* Taxmann's Master Guide to Income-tax Rules.
For complete analysis of Case Laws, *see* Taxmann's Master Guide to Income-tax Rules.
87. Substituted for "10B" by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
88. Inserted, *ibid.*
89. Clause (*a*) renumbered as clause (*ab*), *ibid.*
90. Inserted by the IT (Sixth Amdt.) Rules, 2012, w.r.e.f. 1-4-2012 (applicable for assessment year 2012-13 and subsequent years).
91. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.

would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.]

Determination of arm's length price under section 92C.

10B. (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction [92][or a specified domestic transaction] shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely :—

(*a*) comparable uncontrolled price method, by which,—

(*i*) the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified;

(*ii*) such price is adjusted to account for differences, if any, between the international transaction [92][or the specified domestic transaction] and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market;

(*iii*) the adjusted price arrived at under sub-clause (*ii*) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction [92][or the specified domestic transaction];

(*b*) resale price method, by which,—

(*i*) the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;

(*ii*) such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

(*iii*) the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

(*iv*) the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction [92][or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;

(*v*) the adjusted price arrived at under sub-clause (*iv*) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise;

(*c*) cost plus method, by which,—

(*i*) the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise, are determined;

92. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.

(*ii*) the amount of a normal gross profit mark-up to such costs (computed according to the same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction, or a number of such transactions, is determined;

(*iii*) the normal gross profit mark-up referred to in sub-clause (*ii*) is adjusted to take into account the functional and other differences, if any, between the international transaction [93][or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market;

(*iv*) the costs referred to in sub-clause (*i*) are increased by the adjusted profit mark-up arrived at under sub-clause (*iii*);

(*v*) the sum so arrived at is taken to be an arm's length price in relation to the supply of the property or provision of services by the enterprise;

(*d*) profit split method, which may be applicable mainly in international transactions [93][or specified domestic transactions] involving transfer of unique intangibles or in multiple international transactions [93][or specified domestic transactions] which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction, by which—

(*i*) the combined net profit of the associated enterprises arising from the international transaction [93][or the specified domestic transaction] in which they are engaged, is determined;

(*ii*) the relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;

(*iii*) the combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under sub-clause (*ii*);

(*iv*) the profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction [93][or the specified domestic transaction] :

Provided that the combined net profit referred to in sub-clause (*i*) may, in the first instance, be partially allocated to each enterprise so as to provide it with a basic return appropriate for the type of international transaction [93][or specified domestic transaction] in which it is engaged, with reference to market returns achieved for similar types of transactions by independent enterprises, and thereafter, the residual net profit

93. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.

remaining after such allocation may be split amongst the enterprises in proportion to their relative contribution in the manner specified under sub-clauses (*ii*) and (*iii*), and in such a case the aggregate of the net profit allocated to the enterprise in the first instance together with the residual net profit apportioned to that enterprise on the basis of its relative contribution shall be taken to be the net profit arising to that enterprise from the international transaction [94][or the specified domestic transaction];

(*e*) transactional net margin method, by which,—

(*i*) the net profit margin realised by the enterprise from an international transaction [94][or a specified domestic transaction] entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

(*ii*) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(*iii*) the net profit margin referred to in sub-clause (*ii*) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction [94][or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(*iv*) the net profit margin realised by the enterprise and referred to in sub-clause (*i*) is established to be the same as the net profit margin referred to in sub-clause (*iii*);

(*v*) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction [94][or the specified domestic transaction];

[95][(*f*) any other method as provided in rule 10AB.]

(2) For the purposes of sub-rule (1), the comparability of an international transaction [94][or a specified domestic transaction] with an uncontrolled transaction shall be judged with reference to the following, namely:—

(*a*) the specific characteristics of the property transferred or services provided in either transaction;

(*b*) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;

(*c*) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

94. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
95. Inserted by the IT (Sixth Amdt.) Rules, 2012, w.r.e.f. 1-4-2012 (applicable for assessment year 2012-13 and subsequent years).

(*d*) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

(3) An uncontrolled transaction shall be comparable to an international transaction [96][or a specified domestic transaction] if—

(*i*) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or

(*ii*) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

(4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction [96][or a specified domestic transaction] shall be the data relating to the financial year [97][(hereafter in this rule and in rule 10CA referred to as the 'current year')] in which the international transaction [96][or the specified domestic transaction] has been entered into:

Provided that data relating to a period not being more than two years prior to [98][the current year] may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared:

[97][**Provided further** that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014.]

[97][(5) In a case where the most appropriate method for determination of the arm's length price of an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014, is the method specified in clause (*b*), clause (*c*) or clause (*e*) of sub-section (1) of section 92C, then, notwithstanding anything contained in sub-rule (4), the data to be used for analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be,—

(*i*) the data relating to the current year ; or

(*ii*) the data relating to the financial year immediately preceding the current year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee, for the assessment year relevant to the current year:

Provided that where the data relating to the current year is subsequently available at the time of determination of arm's length price of an international transaction

96. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
97. Inserted by the IT (Sixteenth Amdt.) Rules, 2015, w.e.f. 19-10-2015.
98. Substituted for "such financial year", *ibid.*

or a specified domestic transaction during the course of any assessment proceeding for the assessment year relevant to the current year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year.]

Most appropriate method.

10C. (1) For the purposes of sub-section (1) of section 92C, the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction [99][or specified domestic transaction], and which provides the most reliable measure of an arm's length price in relation to the international transaction [99][or the specified domestic transaction, as the case may be].

(2) In selecting the most appropriate method as specified in sub-rule (1), the following factors shall be taken into account, namely:—

(*a*) the nature and class of the international transaction [99][or the specified domestic transaction];

(*b*) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;

(*c*) the availability, coverage and reliability of data necessary for application of the method;

(*d*) the degree of comparability existing between the international transaction [99][or the specified domestic transaction] and the uncontrolled transaction and between the enterprises entering into such transactions;

(*e*) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction [99][or the specified domestic transaction] and the comparable uncontrolled transaction or between the enterprises entering into such transactions;

(*f*) the nature, extent and reliability of assumptions required to be made in application of a method.

[1][**Computation of arm's length price in certain cases.**

10CA. (1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92C results in determination of more than one price, then the arm's length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

(2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed:

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99. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
1. Inserted by the IT (Sixteenth Amdt.) Rules, 2015, w.e.f. 19-10-2015.

Provided that in a case referred to in clause (*i*) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,—

(*i*) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(*ii*) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided further that in a case referred to in clause (*ii*) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the two financial years undertaken the same or similar comparable uncontrolled transaction then,—

(*i*) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and

(*ii*) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided also that where the use of data relating to the current year in terms of the proviso to sub-rule (5) of rule 10B establishes that,—

(*i*) the enterprise has not undertaken same or similar uncontrolled transaction during the current year ; or

(*ii*) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,

then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

(3) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:—

(*i*) where the prices have been determined using the method referred to in clause (*b*) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of sales which has been considered for arriving at the respective prices;

(*ii*) where the prices have been determined using the method referred to in clause (*c*) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs which has been considered for arriving at the respective prices;

(*iii*) where the prices have been determined using the method referred to in clause (*e*) of sub-rule (1) of rule 10B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

(4) Where the most appropriate method applied is a method other than the method referred to in clause (*d*) or clause (*f*) of sub-section (1) of section 92C and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule (5) and sub-rule (6).

(5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (4), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(6) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm's length range referred to in sub-rule (4), the arm's length price shall be taken to be the median of the dataset.

(7) In a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified[2] by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

(8) For the purposes of this rule,—

(*a*) "the thirty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least thirty-five per cent of the values included in the dataset are equal to or less than such value :

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(*b*) "the "sixty-fifth percentile" of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least sixty five per cent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(*c*) "the median" of the dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least fifty per cent of the values included in the dataset are equal to or less than such value :

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

Illustration 1.—The data for the current year of the comparable uncontrolled transactions or the entities undertaking such transactions is available at the time of furnishing return of income by the assessee and based on the same, seven enterprises have been identified to have undertaken the comparable uncontrolled transaction in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The Profit Level Indicator (PLI) used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of OC as computed below:

2. *See* S O 1866(E), dated 9-6-2017. For details, *see* Taxmann's Master Guide to Income-tax Rules.

*Word "sixth" is used in Gazette copy.

Sl. No.	Name	Year 1	Year 2	Year 3 [Current Year]	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = **12%**
2	B	OC = 80 OP = 10	OC = 125 OP = 5	OC = 100 OP = 10	Total OC = 305 Total OP = 25	OP/OC = **8.2%**
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = **9%**
4	D	OC = 180 OP = (-)9	OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 550 Total OP = 33	OP/OC = **6%**
5	E	OC = 140 OP = 21	OC = 100 OP = (-) 8	OC = 125 OP = (-) 5	Total OC = 365 Total OP = 8	OP/OC = **2.2%**
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = **11.9%**
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = **10.57%**

From the above, the dataset will be constructed as follows:

Sl. No.	1	2	3	4	5	6	7
Values	2.2%	6%	8.2%	9%	10.57%	11.9%	12%

For construction of the arm's length range the data place of thirty-fifth and sixty-fifth percentile shall be computed in the following manner, namely:

Total No. of data points in dataset * (35/100)

Total No. of data points in dataset * (65/100)

Thus, the data place of the thirty-fifth percentile = 7*0.35 = 2.45.

Since this is not a whole number, the next higher data place, *i.e.*; the value at the third place would have at least thirty-five per cent of the values below it. The thirty-fifth percentile is therefore value at the third place, *i.e.*, 8.2%.

The data place of the †sixty-fifth percentile is = 7*0.65 = 4.55.

Since this is not a whole number, the next higher data place, *i.e.*; the value at the fifth place would have at least sixty-five per cent of the values below it. The sixty-fifth percentile is therefore value at fifth place, *i.e.*, 10.57%.

The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the transaction price of the international transaction or the specified domestic transaction has OP/OC percentage which is equal to or more than 8.2% and less than or equal to 10.57%, it is within the range. The transaction price in such cases will be deemed to be the arm's length price and no adjustment shall be required.

However, if the transaction price is outside the arm's length range, say 6.2%, then for the purpose of determining the arm's length price the median of the dataset shall be first determined in the following manner:

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†Word "sixth" is used in Gazette copy.

The data place of median is calculated by first computing the total number of data point in the data set * (50/100). In this case it is 7 * 0.5 = 3.5.

Since this is not a whole number, the next higher data place, *i.e.*; the value at the fourth place would have at least fifty per cent of the values below it (median).

The median is the value at fourth place, *i.e.*, 9%. Therefore, the arm's length price shall be considered as 9% and adjustment shall accordingly be made.

Illustration 2.—The data of the current year is available in respect of enterprises A, C, E, F and G at the time of furnishing the return of income by the assessee and the data of the financial year preceding the current year has been used to identify comparable uncontrolled transactions undertaken by enterprises B and D. Further, if the enterprises have also undertaken comparable uncontrolled transactions in earlier years as detailed in the table, the weighted average and dataset shall be computed as below:

Sl. No.	*Name*	*Year 1*	*Year 2*	*Year 3 [Current Year]*	*Aggregation of OC and OP*	*Weighted Average*
1	*2*	*3*	*4*	*5*	*6*	*7*
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	B	OC = 80 OP = 10	OC = 125 OP = 5		Total OC = 205 Total OP = 15	OP/OC = 7.31%
3	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
4	D		OC = 220 OP = 22		Total OC = 220 Total OP = 22	OP/OC =10%
5	E			OC = 100 OP = (-) 5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
6	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
7	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

From the above, the dataset will be constructed as follows:

Sl. No.	*1*	*2*	*3*	*4*	*5*	*6*	*7*
Values	(-)5%	7.31%	9%	10%	10.57%	11.9%	12%

If during the course of assessment proceedings, the data of the current year is available and the use of such data indicates that B has failed to pass any qualitative or quantitative filter or for any other reason the transaction undertaken is not a comparable uncontrolled transaction, then, B shall not be considered for inclusion in the dataset. Further, if the data available at this stage indicates a new comparable uncontrolled transaction undertaken by enterprise H, then, it shall be included. The weighted average and dataset shall be recomputed as under:

Sl. No.	Name	Year 1	Year 2	Year 3 (Current Year)	Aggregation of OC and OP	Weighted Average
1	2	3	4	5	6	7
1	A	OC = 100 OP = 12	OC = 150 OP = 10	OC = 225 OP = 35	Total OC = 475 Total OP = 57	OP/OC = 12%
2	C	OC = 250 OP = 22	OC = 230 OP = 26	OC = 250 OP = 18	Total OC = 730 Total OP = 66	OP/OC = 9%
3	D		OC = 220 OP = 22	OC = 150 OP = 20	Total OC = 370 Total OP = 42	OP/OC = 11.35%
4	E			OC = 100 OP = (-) 5	Total OC = 100 Total OP = (-)5	OP/OC = (-)5%
5	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
6	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%
7	H	OC = 150 OP = 12		OC = 80 OP = 10	Total OC = 230 Total OP = 22	OP/OC = 9.56%

From the above, the dataset will be constructed as follows:

Sl. No.	1	2	3	4	5	6	7
Values	(-)5%	9%	9.56%	10.57%	11.35%	11.9%	12%

Illustration 3.—In a given case the dataset of 20 prices arranged in ascending order is as under:

Sl. No.	Profits (in Rs. Thousands)
1	2
1	42.00
2	43.00
3	44.00
4	44.50
5	45.00
6	45.25
7	47.00
8	48.00
9	48.15
10	48.35
11	48.45
12	48.48
13	48.50

Sl. No.	*Profits (in Rs. Thousands)*
14	49.00
15	49.10
16	49.35
17	49.50
18	49.75
19	50.00
20	50.15

Applying the formula given in the Illustration 1, the data place of the thirty-fifth and sixty-fifth percentile is determined as follows:

Thirty-fifth percentile place = $20 \times (35/100) = 7$.

Sixty-fifth percentile place = $20 \times (65/100) = 13$.

Since the thirty-fifth percentile place is a whole number, it shall be the average of the prices at the seventh and next higher, *i.e.*, eighth place. This is (47+48)/2 = Rs. 47,500.

Similarly, the sixty-fifth percentile will be average of thirteenth and fourteenth place prices. This is (48.5+49)/2 = Rs. 48,750

The median of the range (the fiftieth percentile place) = $20 \times (50/100) = 10$

Since the fiftieth percentile place is a whole number, it shall be the average of the prices at the tenth and next higher, *i.e.*, eleventh place. This is (48.35+48.45)/2 = Rs. 48,400.

Thus, the arm's length range in this case shall be from Rs. 47,500 to Rs. 48,750.

Consequently, any transaction price which is equal to or more than Rs. 47,500 but less than or equal to Rs. 48,750 shall be considered to be within the arm's length range.]

[3][**Computation of interest income pursuant to secondary adjustments.**

10CB. (1) For the purposes of sub-section (2) of section 92CE of the Act, the time limit for repatriation of [4][excess money or part thereof] shall be on or before ninety days,—

(*i*) from the due date of filing of return under sub-section (1) of section 139 of the Act where primary adjustments to transfer price has been made *suo motu* by the assessee in his return of income;

(*ii*) from the date of the order of Assessing Officer or the appellate authority, as the case may be, if the primary adjustments to transfer price as determined in the aforesaid order has been accepted by the assessee;

3. Inserted by the IT (Fifteenth Amdt.) Rules, 2017, w.e.f. 15-6-2017.
4. Substituted for "excess money" by the IT (Eleventh Amdt.) Rules, 2019, w.e.f. 30-9-2019.

[5][(*iii*) in a case where primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Act in respect of a previous year,—

(*a*) from the date of filing of return under sub-section (1) of section 139 of the Act if the advance pricing agreement has been entered into on or before the due date of filing of return for the relevant previous year;

(*b*) from the end of the month in which the advance pricing agreement has been entered into if the said agreement has been entered into after the due date of filing of return for the relevant previous year;]

(*iv*) from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of option exercised by the assessee as per the safe harbour rules under section 92CB; or

[6][(*v*) from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure, where the primary adjustment to transfer price is determined by such resolution under a Double Taxation Avoidance Agreement entered into under section 90 or section 90A of the Act;]

(2) The imputed per annum interest income on [7][excess money or part thereof] which is not repatriated within the time limit as per sub-section (1) of section 92CE of the Act shall be computed,—

(*i*) at the one year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant previous year *plus* three hundred twenty five basis points in the cases where the international transaction is denominated in Indian rupee; or

(*ii*) at six month London Interbank Offered Rate as on 30th September of the relevant previous year *plus* three hundred basis points in the cases where the international transaction is denominated in foreign currency.

[8][(3) The interest referred to in sub-rule (2) shall be chargeable on excess money or part thereof which is not repatriated—

(*a*) in cases referred to in clause (*i*), in sub-clause (*a*) of clause (*iii*) and clause (*iv*) of sub-rule (1), from the due date of filing of return under sub-section (1) of section 139 of the Act;

(*b*) in cases referred to in clause (*ii*) of sub-rule (1), from the date of the order of Assessing Officer or the appellate authority, as the case may be;

5. Substituted by the IT (Eleventh Amdt.) Rules, 2019, w.e.f. 30-9-2019. Prior to its substitution, clause (*iii*) read as under :

"(*iii*) from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of agreement for advance pricing entered into by the assessee under section 92CD;"

6. Substituted, *ibid.* Prior to its substitution, clause (*v*) read as under :

"(*v*) from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of an agreement made under the mutual agreement procedure under a Double Taxation Avoidance Agreement entered into under section 90 or 90A;"

7. Substituted for "excess money", *ibid.*

8. Inserted, *ibid.*

(*c*) in cases referred to in sub-clause (*b*) of clause (*iii*) of sub-rule (1), from the end of the month in which the advance pricing agreement has been entered into by the assessee under section 92CC of the Act;

(*d*) in cases referred to in clause (*v*) of sub-rule (1), from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure.]

[9][*Explanation.*—For the purposes of this rule,—

(*A*) "International transaction" shall have the same meaning as assigned to it in section 92B of the Act;

(*B*) The rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken and the "telegraphic transfer buying rate" shall have the same meaning as assigned in the *Explanation* to rule 26.]]

Information and documents to be kept and maintained under section 92D.

10D. (1) Every person who has entered into an international transaction [10-11][or a specified domestic transaction] shall keep and maintain the following information and documents, namely:—

(*a*) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;

(*b*) a profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions [10-11][or specified domestic transactions, as the case may be,] have been entered into by the assessee, and ownership linkages among them;

(*c*) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(*d*) the nature and terms (including prices) of international transactions [10-11][or specified domestic transactions] entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction;

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9. Substituted by the IT (Eleventh Amdt.) Rules, 2019, w.e.f. 30-9-2019. Prior to its substitution, *Explanation* read as under :

'*Explanation.*—For the purposes of this rule "International transaction" shall have the meaning assigned to it in section 92B of the Act.'

10-11. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.

(*e*) a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction [12][or the specified domestic transaction];

(*f*) a record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions [12][or the specified domestic transactions] entered into by the assessee;

(*g*) a record of uncontrolled transactions taken into account for analysing their comparability with the international transactions [12][or the specified domestic transactions] entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions [12][or specified domestic transactions, as the case may be];

(*h*) a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction [12][or specified domestic transaction];

(*i*) a description of the methods considered for determining the arm's length price in relation to each international transaction [12][or specified domestic transaction] or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case;

(*j*) a record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction [12][or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;

(*k*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;

(*l*) details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;

(*m*) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

(2) [13][Nothing contained in sub-rule (1), in so far as it relates to an international transaction, shall] apply in a case where the aggregate value, as recorded in the

12. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
13. Substituted for "Nothing contained in sub-rule (1) shall", *ibid.*

books of account, of international transactions entered into by the assessee does not exceed one crore rupees :

Provided that the assessee shall be required to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with section 92.

[14][(2A) Nothing contained in sub-rule (1), in so far as it relates to an eligible specified domestic transaction referred to in rule 10THB, shall apply in a case of an eligible assessee mentioned in rule 10THA and—

(*a*) the eligible assessee, referred to in clause (*i*) of rule 10THA, shall keep and maintain the following information and documents, namely:—

(*i*) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;

(*ii*) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(*iii*) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and value of each such transaction or class of such transaction;

(*iv*) a record of proceedings, if any, before the regulatory commission and orders of such commission relating to the specified domestic transaction;

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14. Substituted by the IT (Nineteenth Amdt.) Rules, 2015, w.e.f. 8-12-2015. Prior to its substitution, sub-rule (2A), as inserted by the IT (Second Amdt.) Rules, 2015, w.e.f. 4-2-2015, read as under :

"(2A) Nothing contained in sub-rule (1), in so far as it relates to an eligible specified domestic transaction referred to in rule 10THB, shall apply in a case of an eligible assessee referred to in rule 10THA and, the said eligible assessee, shall keep and maintain the following information and documents, namely:—

(*i*) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;

(*ii*) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(*iii*) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and the value of each such transaction or class of such transaction;

(*iv*) a record of proceedings if any before the regulatory commission and orders of such commission relating to the specified domestic transaction;

(*v*) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(*vi*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;

(*vii*) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price."

(*v*) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(*vi*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price; and

(*vii*) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price;

(*b*) the eligible assessee, referred to in clause (*ii*) of rule 10THA, shall keep and maintain the following information and documents, namely:—

(*i*) a description of the ownership structure of the assessee co-operative society with details of shares or other ownership interest held therein by the members;

(*ii*) description of members including their addresses and period of membership;

(*iii*) the nature and terms (including prices) of specified domestic transactions entered into with each member and the quantum and value of each such transaction or class of such transaction;

(*iv*) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(*v*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;

(*vi*) the documentation regarding price being routinely declared in transparent manner and being available in public domain; and

(*vii*) any other information, data or document which may be relevant for determination of the transfer price.]

(3) The information specified in [15][sub-rules (1) and (2A)] shall be supported by authentic documents, which may include the following :

(*a*) official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;

(*b*) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

(*c*) price publications including stock exchange and commodity market quotations;

(*d*) published accounts and financial statements relating to the business affairs of the associated enterprises;

(*e*) agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the

15. Substituted for "sub-rule (1)" by the IT (Second Amdt.) Rules, 2015, w.e.f. 4-2-2015.

international transactions [16][or the specified domestic transactions, as the case may be];

(*f*) letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;

(*g*) documents normally issued in connection with various transactions under the accounting practices followed.

(4) The information and documents specified under [17][sub-rules (1), (2) and (2A)], should, as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (*iv*) of section 92F:

Provided that where an international transaction [16][or a specified domestic transaction] continues to have effect over more than one previous year, fresh documentation need not be maintained separately in respect of each previous year, unless there is any significant change in the nature or terms of the international transaction [16][or the specified domestic transaction, as the case may be], in the assumptions made, or in any other factor which could influence the transfer price, and in the case of such significant change, fresh documentation as may be necessary under [17][sub-rules (1), (2) and (2A)] shall be maintained bringing out the impact of the change on the pricing of the international transaction [16][or the specified domestic transaction].

(5) The information and documents specified in [17][sub-rules (1), (2) and (2A)] shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

[18][[19][***Maintenance and furnishing of information and document by certain person under section 92D.***]

10DA. (1) Every person, being a constituent entity of an international group shall,—

(*i*) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and

(*ii*) the aggregate value of international transactions,—

(*A*) during the accounting year, as per the books of account, exceeds fifty crore rupees, or

(*B*) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of account, exceeds ten crore rupees,

16. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
17. Substituted for "sub-rules (1) and (2)" by the IT (Second Amdt.) Rules, 2015, w.e.f. 4-2-2015.
18. Rules 10DA and 10DB inserted by the IT (Twenty-fourth Amdt.) Rules, 2017, w.e.f. 31-10-2017.
19. Substituted for "Information and documents to be kept and maintained under proviso to sub-section (1) of section 92D and to be furnished in terms of sub-section (4) of section 92D." by the IT (Second Amdt.) Rules, 2020, w.e.f. **1-4-2020**.

keep and maintain the following information and documents of the international group, namely:—

(*a*) a list of all entities of the international group along with their addresses;

(*b*) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;

(*c*) a description of the business of international group during the accounting year including,—

(*I*) the nature of the business or businesses;

(*II*) the important drivers of profits of such business or businesses;

(*III*) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent of consolidated group revenue;

(*IV*) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services;

(*V*) a description of the capabilities of the main service providers within the international group;

(*VI*) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;

(*VII*) a list and description of the major geographical markets for the products and services offered by the international group;

(*VIII*) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent of the revenues or assets or profits of such group; and

(*IX*) a description of the important business restructuring transactions, acquisitions and divestments;

(*d*) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management;

(*e*) a list of all entities of the international group engaged in development and management of intangible property along with their addresses;

(*f*) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property;

(*g*) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements;

(*h*) a detailed description of the transfer pricing policies of the international group related to research and development and intangible property;

(*i*) a description of important transfers of interest in intangible property, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers;

(*j*) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders;

(*k*) a list of group entities that provide central financing functions, including their place of operation and of effective management;

(*l*) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities;

(*m*) a copy of the annual consolidated financial statement of the international group; and

(*n*) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.

[20][*(2) The information and document specified under sub-rule (1) shall be furnished to the Joint Commissioner referred to in sub-rule (1) of rule 10DB, in Form No. 3CEAA*

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20. Sub-rules (2), (3) and (4) substituted for sub-rules (2), (3), (4) and (5) by the IT (Second Amdt.) Rules, 2020, w.e.f. **1-4-2020**. Prior to their substitution, sub-rules (2), (3), (4) and (5) read as under :

"(2) The report of the information referred to in sub-rule (1) shall be in Form No. 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139:

Provided that the information in Form No. 3CEAA for the accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.

(3) Information in,—

(*i*) Part A of Form No. 3CEAA shall be furnished by every person, being a constituent entity of an international group, whether or not the conditions as provided in sub-rule (1) are satisfied;

(Contd. on p. 1.149)

on or before the due date for furnishing the return of income as specified under sub-section (1) of section 139.

(3) The constituent entity shall furnish Part A of Form No. 3CEAA even if the conditions specified under sub-rule (1) are not satisfied.

(4) Where there are more than one constituent entities resident in India of an international group, the Form No. 3CEAA may be furnished by any one constituent entity, if,—

(a) the international group has designated such entity for this purpose; and

(b) the information has been conveyed in Form No. 3CEAB to the Joint Commissioner referred to in sub-rule (1) of rule 10DB, in this behalf thirty days before the due date of furnishing the Form No. 3CEAA.]

[21][*(5)*] The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAA and Form No. 3CEAB and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

[21][*(6)*] The information and documents specified in sub-rule (1) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

[21][*(7)*] The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year.

Explanation.—For the purposes of this rule,—

(*A*) "telegraphic transfer buying rate" shall have the same meaning as assigned in the *Explanation* to rule 26;

(*B*) the terms "accounting year", "consolidated financial statement" and "international group" shall have the same meaning as assigned in sub-section (9) of section 286.

(Contd. from p. 1.148)

(*ii*) Part B of Form No. 3CEAA shall be furnished by a person, being a constituent entity of an international group, in those cases where the conditions as provided in sub-rule (1) are satisfied.

(4) Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (*i*) of sub-rule (3), as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEAB.

(5) The intimation referred to in sub-rule (4) shall be made at least thirty days before the due date of filing the report as specified under sub-rule (2)."

21. Sub-rules (6), (7) and (8) renumbered as sub-rules (5), (6) and (7), respectively, by the IT (Second Amdt.) Rules, 2020, w.e.f. **1-4-2020.**

Furnishing of Report in respect of an International Group.

10DB. [22][*(1) The income-tax authority for the purposes of section 286 shall be the Joint Commissioner as may be designated by the Director General of Income-tax (Risk Assessment).*

(2) The notification under sub-section (1) of section 286 shall be made in Form No. 3CEAC two months prior to the due date for furnishing of report as specified under sub-section (2) of said section.]

(3) Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report referred to in sub-section (2) of section 286 [23][***] in Form No. 3CEAD.

[24][(4) The period for furnishing of the report under sub-section (4) of section 286 by the constituent entity referred to in that sub-section shall be twelve months from the end of the reporting accounting year:

Provided that in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be six months from the end of the month in which said systemic failure has been intimated.]

[25][*(5) The information required to be conveyed under proviso to sub-section (4) of section 286 regarding the designated constituent entity shall be furnished in Form No. 3CEAE.*]

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22. Substituted by the IT (Second Amdt.) Rules, 2020, w.e.f. **6-1-2020**. Prior to their substitution, sub-rules (1) and (2) read as under :

"(1) For the purposes of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax (Risk Assessment) in Form No. 3CEAC, the following, namely:—

(*a*) whether it is the alternate reporting entity of the international group; or

(*b*) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

(2) Every intimation under sub-rule (1) shall be made at least two months prior to the due date for furnishing of report as specified under sub-section (2) of section 286."

23. Words "to the Director General of Income-tax (Risk Assessment)" omitted by the IT (Second Amdt.) Rules, 2020, w.e.f. **6-1-2020**.

24. Substituted by the IT (Fourteenth Amdt.) Rules, 2018, w.e.f. 18-12-2018. Prior to its substitution, sub-rule (4) read as under :

"(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-rule (3), shall furnish the report referred to in sub-rule (3) within the time specified therein if the provisions of sub-section (4) of section 286 are applicable in its case."

25. Substituted by the IT (Second Amdt.) Rules, 2020, w.e.f. **6-1-2020**. Prior to its substitution, sub-rule (5) read as under :

"(5) If there are more than one constituent entities resident in India of an international group, other than the entity referred to in sub-rule (3), then the report referred to in sub-rule (4) may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE."

(6) For the purposes of sub-section (7) of section 286, the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees.

(7) Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

(8) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAC, Form No. 3CEAD and Form No. 3CEAE and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

Explanation.—For the purposes of this rule,—

(*A*) "telegraphic transfer buying rate" shall have the same meaning as assigned in the *Explanation* to rule 26;

(*B*) the terms "accounting year", "alternate reporting entity", "consolidated financial statement", "international group" and "reporting accounting year" shall have the same meaning as assigned in sub-section (9) of section 286.]

Report from an accountant to be furnished under section 92E.

10E. The report from an accountant required to be furnished under section 92E by every person who has entered into an international transaction [26][or a specified domestic transaction] during a previous year shall be in Form No. 3CEB and be verified in the manner indicated therein.]

[27][*DA.—*Advance Pricing Agreement Scheme*

Meaning of expressions used in matters in respect of advance pricing agreement.

10F. For the purposes of this rule and rules 10G to 10T,—

(*a*) "agreement" means an advance pricing agreement entered into between the Board and the applicant, with the approval of the Central Government, as referred to in sub-section (1) of section 92CC of the Act;

(*b*) "application" means an application for advance pricing agreement made under rule 10-I;

[28][(*ba*) "applicant" means a person who has made an application;]

(*c*) "bilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 44GA between the competent authority in India with the competent

26. Inserted by the IT (Sixth Amdt.) Rules, 2013, w.r.e.f. 1-4-2013.
27. Rules 10F to 10T inserted by the IT (Tenth Amdt.) Rules, 2012, w.e.f. 30-8-2012. *See* also FAQs on Advance Pricing Agreement issued by the CBDT.
28. Inserted by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.
*Heading No. 'DA' is provided by Editor.

authority in the other country regarding the most appropriate transfer pricing method or the arms' length price;

(*d*) "competent authority in India" means an officer authorised by the Central Government for the purpose of discharging the functions as such for matters in respect of any agreement entered into under section 90 or 90A of the Act;

(*e*) "covered transaction" means the international transaction or transactions for which agreement has been entered into;

(*f*) "critical assumptions" means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed;

(*g*) "most appropriate transfer pricing method" means any of the transfer pricing method, referred to in sub-section (1) of section 92C of the Act, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or function performed by such persons or such other relevant factors prescribed by the Board under rules 10B and 10C;

(*h*) "multilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 44GA between the competent authority in India with the competent authorities in the other countries regarding the most appropriate transfer pricing method or the arms' length price;

[29][(*ha*) "rollback year" means any previous year, falling within the period not exceeding four previous years, preceding the first of the previous years referred to in sub-section (4) of section 92CC;]

(*i*) "tax treaty" means an agreement under section 90, or section 90A of the Act for the avoidance of double taxation;

(*j*) "team" means advance pricing agreement team consisting of income-tax authorities as constituted by the Board and including such number of experts in economics, statistics, law or any other field as may be nominated by the Director General of Income-tax (International Taxation);

(*k*) "unilateral agreement" means an agreement between the Board and the applicant which is neither a bilateral nor multilateral agreement.

Persons eligible to apply.

10G. Any person who—

(*i*) has undertaken an international transaction; or

(*ii*) is contemplating to undertake an international transaction,

shall be eligible to enter into an agreement under these rules.

29. Inserted by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.

Pre-filing consultation.

10H. (1) [30][Any] person proposing to enter into an agreement under these rules [31][may], by an application in writing, make a request for a pre-filing consultation.

(2) The request for pre-filing consultation shall be made in Form No. 3CEC to the Director General of Income-tax (International Taxation).

(3) On receipt of the request in Form No. 3CEC, the team shall hold pre-filing consultation with the person referred to in rule 10G.

(4) The competent authority in India or his representative shall be associated in pre-filing consultation involving bilateral or multilateral agreement.

(5) The pre-filing consultation shall, among other things,—

(*i*) determine the scope of the agreement;

(*ii*) identify transfer pricing issues;

(*iii*) determine the suitability of international transaction for the agreement;

(*iv*) discuss broad terms of the agreement.

(6) The pre-filing consultation shall—

(*i*) not bind the Board or the person to enter into an agreement or initiate the agreement process;

(*ii*) not be deemed to mean that the person has applied for entering into an agreement.

Application for advance pricing agreement.

10-I. (1) Any person, [32][referred to in rule 10G] may, if desires to enter into an agreement furnish an application in Form No. 3CED along with the requisite fee.

(2) The application shall be furnished to Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India in case of bilateral or multilateral agreement.

(3) Application in Form No. 3CED may be filed by the person referred to in rule 10G at any time—

(*i*) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or

(*ii*) before undertaking the transaction in respect of remaining transactions.

(4) Every application in Form No. 3CED shall be accompanied by the proof of payment of fees as specified in sub-rule (5).

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30. Substituted for "Every" by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.
31. Substituted for "shall", *ibid.*
32. Substituted for "who has entered into a pre-filing consultation as referred to in rule 10H", *ibid.*

(5) The fees payable shall be in accordance with following table based on the amount of international transaction entered into or proposed to be undertaken in respect of which the agreement is proposed:

Amount of international transaction entered into or proposed to be undertaken in respect of which agreement is proposed during the proposed period of agreement	*Fee*
Amount not exceeding Rs. 100 crores	10 lacs
Amount not exceeding Rs. 200 crores	15 lacs
Amount exceeding Rs. 200 crores	20 lacs

Withdrawal of application for agreement.

10J. (1) The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.

(2) The application for withdrawal shall be in Form No. 3CEE.

(3) The fee paid shall not be refunded on withdrawal of application by the applicant.

Preliminary processing of application.

10K. (1) Every application filed in Form No. 3CED shall be complete in all respects and accompanied by requisite documents.

(2) If any defect is noticed in the application in Form No. 3CED or if any relevant document is not attached thereto or the application is not in accordance with understanding reached in [33][any] pre-filing consultation referred to in rule 10H, the Director General of Income-tax (International Taxation) (for unilateral agreement) and competent authority in India (for bilateral or multilateral agreement) shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application.

(3) The applicant shall remove the deficiency or modify the application within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf, may be extended, so however, that the total period of removal of deficiency or modification does not exceed thirty days.

(4) The Director General of Income-tax (International Taxation) or the competent authority in India, as the case may be, on being satisfied, may pass an order providing that application shall not be allowed to be proceeded with if the application is defective and defect is not removed by applicant in accordance with sub-rule (3).

(5) No order under sub-rule (4) shall be passed without providing an opportunity of being heard to the applicant and if an application is not allowed to be proceeded with, the fee paid by the applicant shall be refunded.

33. Inserted by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.

Procedure.

10L. (1) If the application referred to in rule 10K has been allowed to be proceeded with, the team or the competent authority in India or his representative shall process the same in consultation and discussion with the applicant in accordance with provisions of this rule.

(2) For the purpose of sub-rule (1), it shall be competent for the team or the competent authority in India or its representative to—

(*i*) hold meetings with the applicant on such time and date as it deem fit;

(*ii*) call for additional document or information or material from the applicant;

(*iii*) visit the applicant's business premises; or

(*iv*) make such inquiries as it deems fit in the circumstances of the case.

(3) For the purpose of sub-rule (1), the applicant may, if he considers it necessary, provide further document and information for consideration of the team or the competent authority in India or his representative.

(4) For bilateral or multilateral agreement, the competent authority shall forward the application to Director General of Income-tax (International Taxation) who shall assign it to one of the teams.

(5) The team, to whom the application has been assigned under sub-rule (4), shall carry out the enquiry and prepare a draft report which shall be forwarded by the Director General of Income-tax (International Taxation) to the competent authority in India.

(6) If the applicant makes a request for bilateral or multilateral agreement in its application, the competent authority in India shall in addition to the procedure provided in this rule invoke the procedure provided in rule 44GA.

(7) The Director General of Income-tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) and the applicant shall prepare a proposed mutually agreed draft agreement enumerating the result of the process referred to in sub-rule (1) including the effect of the arrangement referred to in sub-rule (5) of rule 44GA which has been accepted by the applicant in accordance with sub-rule (8) of the said rule.

(8) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.

(9) Once an agreement has been entered into the Director General of Income-tax (International Taxation) or the competent authority in India, as the case may be, shall cause a copy of the agreement to be sent to the Commissioner of Income-tax having jurisdiction over the assessee.

Terms of the agreement.

10M. (1) An agreement may among other things, include—

(*i*) the international transactions covered by the agreement;

(*ii*) the agreed transfer pricing methodology, if any;

(*iii*) determination of arm's length price, if any;

(*iv*) definition of any relevant term to be used in item (*ii*) or (*iii*);

(*v*) critical assumptions;

[34][(*va*) rollback provision referred to in rule 10MA;]

(*vi*) the conditions if any other than provided in the Act or these rules.

(2) The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.

(3) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.

(4) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.

(5) The assessee which has entered into an agreement shall give a notice in writing of such change in any of the critical assumptions or failure to meet conditions to the Director General of Income-tax (International Taxation) as soon as it is practicable to do so.

(6) The Board shall give a notice in writing of such change in critical assumptions or failure to meet conditions to the assessee, as soon as it comes to the knowledge of the Board.

(7) The revision or the cancellation of the agreement shall be in accordance with rules 10Q and 10R respectively.

[34][**Roll Back of the Agreement.**

10MA. (1) Subject to the provisions of this rule, the agreement may provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during the rollback year (hereinafter referred to as "rollback provision").

(2) The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:—

(*i*) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;

34. Inserted by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.

(*ii*) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date specified in *Explanation 2* to sub-section (1) of section 139;

(*iii*) the report in respect of the international transaction had been furnished in accordance with section 92E;

(*iv*) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and

(*v*) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);

(3) Notwithstanding anything contained in sub-rule (2), rollback provision shall not be provided in respect of an international transaction for a rollback year, if,—

(*i*) the determination of arm's length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or

(*ii*) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

(4) Where the rollback provision specifies the manner in which arm's length price shall be determined in relation to an international transaction undertaken in any rollback year then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any previous year to which the agreement applies, not being a rollback year.

(5) The applicant may, if he desires to enter into an agreement with rollback provision, furnish along with the application, the request for the same in Form No. 3CEDA with proof of payment of an additional fee of five lakh rupees:

[35][**Provided** that in a case where an application has been filed on or before the 31st day of March, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 30th day of June, 2015 or the date of entering into the agreement whichever is earlier:

Provided further that in a case where an agreement has been entered into on or before the 31st day of March, 2015, Form No. 3CEDA along with proof of payment

35. Substituted by IT (Fourth Amendment) Rules, 2015, w.e.f. 1-4-2015. Prior to its substitution, first proviso and second proviso read as under :
"**Provided** that in a case where an application has been filed prior to the 1st day of January, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 31st day of March, 2015 or the date of entering into the agreement whichever is earlier:
Provided further that in a case where an agreement has been entered into before the 1st day of January, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 31st day of March, 2015 and, notwithstanding anything contained in rule 10Q, the agreement may be revised to provide for rollback provision in the said agreement in accordance with this rule."

of additional fee may be filed at any time on or before the 30th day of June, 2011, and, notwithstanding anything contained in rule 10O, the agreement may be revised to provide for rollback provision in the said agreement in accordance with this rule.]]

Amendments to Application.

10N. (1) An applicant may request in writing for an amendment to an application at any stage, before the finalisation of the terms of the agreement.

(2) The Director General of Income-tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) may, allow the amendment to the application, if such an amendment does not have effect of altering the nature of the application as originally filed.

(3) The amendment shall be given effect only if it is accompanied by the additional fee, if any, necessitated by such amendment in accordance with fee as provided in rule 10-I.

Furnishing of Annual Compliance Report.

10-O. (1) The assessee shall furnish an annual compliance report to Director General of Income-tax (International Taxation) for each year covered in the agreement.

(2) The annual compliance report shall be in Form 3CEF.

(3) The annual compliance report shall be furnished in quadruplicate, for each of the years covered in the agreement, within thirty days of the due date of filing the income-tax return for that year, or within ninety days of entering into an agreement, whichever is later.

(4) The Director General of Income-tax (International Taxation) shall send one copy of annual compliance report to the competent authority in India, one copy to the Commissioner of Income-tax who has the jurisdiction over the income-tax assessment of the assessee and one copy to the Transfer Pricing Officer having the jurisdiction over the assessee.

Compliance Audit of the agreement.

10P. (1) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.

(2) For the purposes of sub-rule (1), the Transfer Pricing Officer may require—

(*i*) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;

(*ii*) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.

(3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India

in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.

(4) The Director General of Income-tax (International Taxation) shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.

(5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in rule 10-O is received by the Transfer Pricing Officer.

(6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer if an agreement has been entered into under rule 10L except where the agreement has been cancelled under rule 10R.

Revision of an agreement.

10Q. (1) An agreement, subsequent to it having been entered into, may be revised by the Board, if,—

(*a*) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(*b*) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(*c*) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(2) An agreement may be revised by the Board either *suo motu* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation).

(3) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

(4) In case the assessee is not in agreement with the proposed revision the agreement may be cancelled in accordance with rule 10R.

(5) In case the Board is not in agreement with the request of the assessee for revision of the agreement, the Board shall reject the request in writing giving reason for such rejection.

(6) For the purpose of arriving at the agreement for the proposed revision, the procedure provided in rule 10L may be followed so far as they apply.

(7) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

Cancellation of an agreement.

10R. (1) An agreement shall be cancelled by the Board for any of the following reasons:

(*i*) the compliance audit referred to in rule 10P has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;

(*ii*) the assessee has failed to file the annual compliance report in time;

(*iii*) the annual compliance report furnished by the assessee contains material errors; or

(*iv*) the agreement is to be cancelled under sub-rule (4) of rule 10Q [36][or sub-rule (7) of rule 10RA].

(2) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.

(3) The competent authority in India shall communicate with the competent authority in the other country or countries and provide reason for the proposed cancellation of the agreement in case of bilateral or multilateral agreement.

(4) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.

(5) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(6) The order under the Act, declaring the agreement as *void ab initio*, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.

(7) The order of cancellation shall be intimated to the Assessing Officer and the Transfer Pricing Officer, having jurisdiction over the assessee.

[36][Procedure for giving effect to rollback provision of an Agreement.

10RA. (1) The effect to the rollback provisions of an agreement shall be given in accordance with this rule.

(2) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.

(3) The modified return referred to in sub-rule (2) shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application.

(4) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

(5) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall

36. Inserted by the IT (Third Amdt.) Rules, 2015, w.e.f. 14-3-2015.

be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

(6) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so.

(7) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.]

Renewing an agreement.

10S. Request for renewal of an agreement may be made as a new application for agreement, using the same procedure as outlined in these rules except pre-filing consultation as referred to in rule 10H.

Miscellaneous.

10T. (1) Mere filing of an application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

(2) The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries.]

[37][*DB.*—[38][*Safe Harbour Rules for International Transactions*]

Definitions.

10TA. For the purposes of this rule and rule 10TB to rule 10TG,—

[39][(*a*) "accountant" means an accountant referred to in the *Explanation* below sub-section (2) of section 288 of the Act and includes any person recognised for undertaking cost certification by the Government of the country where the associated enterprise is registered or incorporated or any of its agencies, who fulfils the following conditions, namely:—

(*I*) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,—

(*i*) the entity or its affiliates have presence in more than two countries; and

(*ii*) the annual receipt of the entity in the year preceding the year in which cost certification is undertaken exceeds ten crore rupees;

(*II*) if he is pursuing the profession of accountancy individually or is a valuer then,—

37. Rules 10TA to 10TG inserted by the IT (Sixteenth Amdt.) Rules, 2013, w.e.f. 18-9-2013.
38. Substituted for "Safe Harbour Rules" by the IT (Second Amdt.) Rules, 2015, w.e.f. 4-2-2015.
39. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

(*i*) his annual receipt in the year preceding the year in which cost certification is undertaken, from the exercise of profession, exceeds one crore rupees; and

(*ii*) he has professional experience of not less than ten years.]

[40][(*aa*)] "contract research and development services wholly or partly relating to software development" means the following, namely:—

(*i*) research and development producing new theorems and algorithms in the field of theoretical computer science;

(*ii*) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools;

(*iii*) development of Internet technology;

(*iv*) research into methods of designing, developing, deploying or maintaining software;

(*v*) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information;

(*vi*) experimental development aimed at filling technology knowledge gaps as necessary to develop a software programme or system;

(*vii*) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas); or

(*viii*) upgradation of existing products where source code has been made available by the principal [41][, except where the source code has been made available to carry out routine functions like debugging of the software];

(*b*) "core auto components" means,—

(*i*) engine and engine parts, including piston and piston rings, engine valves and parts cooling systems and parts and power train components;

(*ii*) transmission and steering parts, including gears, wheels, steering systems, axles and clutches;

(*iii*) suspension and braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs;

(*c*) "corporate guarantee" means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing.

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40. Clause (*a*) relettered as clause (*aa*) by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

41. Inserted, *ibid.*

Explanation.—For the purposes of this clause, explicit corporate guarantee does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature;

[42][(*ca*) "employee cost" includes,—

(*i*) salaries and wages;

(*ii*) gratuities;

(*iii*) contribution to Provident Fund and other funds;

(*iv*) the value of perquisites as specified in clause (*2*) of section 17 of the Act;

(*v*) employment related allowances, like medical allowance, dearness allowance, travel allowance and any other allowance;

(*vi*) bonus or commission by whatever name called;

(*vii*) lump sum payments received at the time of termination of service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

(*viii*) expenses incurred on contractual employment of persons performing tasks similar to those performed by the regular employees;

(*ix*) outsourcing expenses, to the extent of employee cost, wherever ascertainable, embedded in the total outsourcing expenses:

Provided that where the extent of employee cost embedded in the total outsourcing expenses is not ascertainable, eighty per cent of the total outsourcing expenses shall be deemed to be the employee cost embedded in the total outsourcing expenses;

(*x*) recruitment expenses;

(*xi*) relocation expenses;

(*xii*) training expenses;

(*xiii*) staff welfare expenses; and

(*xiv*) any other expenses related to employees or the employment;]

(*d*) "generic pharmaceutical drug" means a drug that is comparable to a drug already approved by the regulatory authority in dosage form, strength, route of administration, quality and performance characteristics, and intended use;

(*e*) "information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—

(*i*) back office operations;

(*ii*) call centres or contact centre services;

42. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

(*iii*) data processing and data mining;

(*iv*) insurance claim processing;

(*v*) legal databases;

(*vi*) creation and maintenance of medical transcription excluding medical advice;

(*vii*) translation services;

(*viii*) payroll;

(*ix*) remote maintenance;

(*x*) revenue accounting;

(*xi*) support centres;

(*xii*) website services;

(*xiii*) data search integration and analysis;

(*xiv*) remote education excluding education content development; or

(*xv*) clinical database management services excluding clinical trials,

but does not include any research and development services whether or not in the nature of contract research and development services;

(*f*) "intra-group loan" means loan advanced to wholly owned subsidiary being a non-resident, where the loan—

(*i*) is sourced in Indian rupees;

(*ii*) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and

(*iii*) does not include credit line or any other loan facility which has no fixed term for repayment;

(*g*) "knowledge process outsourcing services" means the following business process outsourcing services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills, namely:—

(*i*) geographic information system;

(*ii*) human resources services;

(*iii*) engineering and design services;

(*iv*) animation or content development and management;

(*v*) business analytics;

(*vi*) financial analytics; or

(*vii*) market research,

but does not include any research and development services whether or not in the nature of contract research and development services;

[43][(*ga*) "low value-adding intra-group services" means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group and which,—

(*i*) are in the nature of support services;

(*ii*) are not part of the core business of the multinational enterprise group, *i.e.*, such services neither constitute the profit-earning activities nor contribute to the economically significant activities of the multinational enterprise group;

(*iii*) are not in the nature of shareholder services or duplicate services;

(*iv*) neither require the use of unique and valuable intangibles nor lead to the creation of unique and valuable intangibles;

(*v*) neither involve the assumption or control of significant risk by the service provider nor give rise to the creation of significant risk for the service provider; and

(*vi*) do not have reliable external comparable services that can be used for determining their arm's length price, but does not include the following services, namely:—

(*i*) research and development services;

(*ii*) manufacturing and production services;

(*iii*) information technology (software development) services;

(*iv*) knowledge process outsourcing services;

(*v*) business process outsourcing services;

(*vi*) purchasing activities of raw materials or other materials that are used in the manufacturing or production process;

(*vii*) sales, marketing and distribution activities;

(*viii*) financial transactions;

(*ix*) extraction, exploration, or processing of natural resources; and

(*x*) insurance and reinsurance;]

(*h*) "non-core auto components" mean auto components other than core auto components;

(*i*) "no tax or low tax country or territory" means a country or territory in which the maximum rate of income-tax is less than fifteen per cent;

(*j*) "operating expense" means the costs incurred in the previous year by the assessee in relation to the international transaction during the course of its normal operations including [43][costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee, reimbursement to associated enterprises of expenses incurred by the

43. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

associated enterprises on behalf of the assessee, amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee and] depreciation and amortisation expenses relating to the assets used by the assessee, but not including the following, namely:—

(*i*) interest expense;

(*ii*) provision for unascertained liabilities;

(*iii*) pre-operating expenses;

(*iv*) loss arising on account of foreign currency fluctuations;

(*v*) extraordinary expenses;

(*vi*) loss on transfer of assets or investments;

(*vii*) expense on account of income-tax; and

(*viii*) other expenses not relating to normal operations of the assessee :

[44][**Provided** that reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee shall be at cost:

Provided further that amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of the associated enterprises and which relate to normal operations of the assessee shall be at cost;]

(*k*) "operating revenue" means the revenue earned by the assessee in the previous year in relation to the international transaction during the course of its normal operations [44][including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee] but not including the following, namely:—

(*i*) interest income;

(*ii*) income arising on account of foreign currency fluctuations;

(*iii*) income on transfer of assets or investments;

(*iv*) refunds relating to income-tax;

(*v*) provisions written back;

(*vi*) extraordinary incomes; and

(*vii*) other incomes not relating to normal operations of the assessee;

(*l*) "operating profit margin" in relation to operating expense means the ratio of operating profit, being the operating revenue in excess of operating expense, to the operating expense expressed in terms of percentage;

44. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

[45][(*la*) "relevant previous year" means the previous year relevant to the assessment year in which the option for safe harbour is validly exercised;]

(*m*) "software development services" means,—

(*i*) business application software and information system development using known methods and existing software tools;

(*ii*) support for existing systems;

(*iii*) converting or translating computer languages;

(*iv*) adding user functionality to application programmes;

(*v*) debugging of systems;

(*vi*) adaptation of existing software; or

(*vii*) preparation of user documentation,

but does not include any research and development services whether or not in the nature of contract research and development services.

Eligible assessee.

10TB. (1) Subject to the provisions of sub-rules (2) and (3), the "eligible assessee" means a person who has exercised a valid option for application of safe harbour rules in accordance with rule 10TE, and—

(*i*) is engaged in providing software development services or information technology enabled services or knowledge process outsourcing services, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal);

(*ii*) has made any intra-group loan;

(*iii*) has provided a corporate guarantee;

(*iv*) is engaged in providing contract research and development services wholly or partly relating to software development, with insignificant risk, to a foreign principal;

(*v*) is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a foreign principal; [46][***]

(*vi*) is engaged in the manufacture and export of core or non-core auto components and where ninety per cent or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer sales [45][; or]

[45][(*vii*) is in receipt of low value-adding intra-group services from one or more members of its group.]

(2) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in item (*i*) of sub-rule (1), the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors, namely:—

45. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

46. Word "or" omitted, *ibid.*

(*a*) the foreign principal performs most of the economically significant functions involved, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises, while the eligible assessee carries out the work assigned to it by the foreign principal;

(*b*) the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal or its other associated enterprises, and the eligible assessee is only provided a remuneration for the work carried out by it;

(*c*) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which not only has the capability to control or supervise but also actually controls or supervises the activities carried out through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(*d*) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(*e*) the eligible assessee has no ownership right, legal or economic, on any intangible generated or on the outcome of any intangible generated or arising during the course of rendering of services, which vests with the foreign principal as evident from the contract and the conduct of the parties.

(3) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in items (*iv*) and (*v*) of sub-rule (1), the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors, namely:—

(*a*) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises while the eligible assessee carries out the work assigned to it by the foreign principal;

(*b*) the foreign principal or its other associated enterprises provides the funds or capital and other economically significant assets including intangibles required for research or product development and also provides a remuneration to the eligible assessee for the work carried out by it;

(*c*) the eligible assessee works under the direct supervision of the foreign principal or its other associated enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development, through its strategic decisions to

perform core functions as well as by monitoring activities on a regular basis;

(*d*) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(*e*) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and is evident from the contract as well as the conduct of the parties.

Eligible international transaction.

10TC. "Eligible international transaction" means an international transaction between the eligible assessee and its associated enterprise, either or both of whom are non-resident, and which comprises of :—

(*i*) provision of software development services;

(*ii*) provision of information technology enabled services;

(*iii*) provision of knowledge process outsourcing services;

(*iv*) advance of intra-group loan;

(*v*) provision of corporate guarantee, where the amount guaranteed,—

(*a*) does not exceed one hundred crore rupees; or

(*b*) exceeds one hundred crore rupees, and the credit rating of the associated enterprise, done by an agency registered with the Securities and Exchange Board of India, is of the adequate to highest safety;

(*vi*) provision of contract research and development services wholly or partly relating to software development;

(*vii*) provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs;

(*viii*) manufacture and export of core auto components; [47][***]

(*ix*) manufacture and export of non-core auto components [48][; or]

[48][(*x*) receipt of low value-adding intra-group services from one or more members of its group,]

by the eligible assessee.

Safe Harbour.

10TD. (1) Where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accor-

47. Word "or" omitted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

48. Inserted, *ibid.*

dance with the circumstances as specified in sub-rule (2) [49][or, as the case may be, sub-rule (2A)].

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

S. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
1.	Provision of software development services referred to in item (*i*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is— (*i*) not less than 20 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (*ii*) not less than 22 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
2.	Provision of information technology enabled services referred to in item (*ii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is— (*i*) not less than 20 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of five hundred crore rupees; or (*ii*) not less than 22 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of five hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (*iii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 per cent.
4.	Advancing of intra-group loans referred to in item (*iv*) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year *plus* 150 basis points.
5.	Advancing of intra-group loans referred to in item (*iv*) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30th June of the relevant previous year *plus* 300 basis points.

49. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

S. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
6.	Providing corporate guarantee referred to in sub-item (*a*) of item (*v*) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 2 per cent per annum on the amount guaranteed.
7.	Providing corporate guarantee referred to in sub-item (*b*) of item (*v*) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 1.75 per cent per annum on the amount guaranteed.
8.	Provision of contract research and development services wholly or partly relating to software development referred to in item (*vi*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 30 per cent.
9.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (*vii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 29 per cent.
10.	Manufacture and export of core auto components referred to in item (*viii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.
11.	Manufacture and export of non-core auto components referred to in item (*ix*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.

[50][(2A) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

Sl. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
1.	Provision of software development services referred to in item (*i*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is— (*i*) not less than 17 per cent, where the value of international transaction does not exceed a sum of one hundred crore rupees; or (*ii*) not less than 18 per cent, where the value of international transaction exceeds a sum of

50. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

Sl. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
		one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
2.	Provision of information technology enabled services referred to in item (*ii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is— (*i*) not less than 17 per cent, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of one hundred crore rupees; or (*ii*) not less than 18 per cent, where the aggregate value of such transactions entered into during the previous year exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.
3.	Provision of knowledge process outsourcing services referred to in item (*iii*) of rule 10TC.	The value of international transaction does not exceed a sum of two hundred crore rupees and the operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is— (*i*) not less than 24 per cent and the Employee Cost in relation to the Operating Expense is at least sixty per cent; (*ii*) not less than 21 per cent and the Employee Cost in relation to the Operating Expense is forty per cent or more but less than sixty per cent; or (*iii*) not less than 18 per cent and the Employee Cost in relation to the Operating Expense does not exceed forty per cent.
4.	Advancing of intra-group loans referred to in item (*iv*) of rule 10TC where the amount of loan is denominated in Indian Rupees (INR).	The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year *plus*,— (*i*) 175 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent; (*ii*) 325 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent; (*iii*) 475 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent; (*iv*) 625 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or

Sl. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
		(*v*) 425 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.
5.	Advancing of intra-group loans referred to in item (*iv*) of rule 10TC where the amount of loan is denominated in foreign currency.	The interest rate declared in relation to the eligible international transaction is not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year *plus*,— (*i*) 150 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent; (*ii*) 300 basis points, where the associated enterprise has CRISIL credit rating of BBB–, BBB or BBB+ or its equivalent; (*iii*) 450 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent; (*iv*) 600 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or (*v*) 400 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to one hundred crore Indian rupees in the aggregate as on 31st March of the relevant previous year.
6.	Providing corporate guarantee referred to in sub-item (*a*) or sub-item (*b*) of item (*v*) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than one per cent per annum on the amount guaranteed.
7.	Provision of contract research and development services wholly or partly relating to software development referred to in item (*vi*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent, where the value of the international transaction does not exceed a sum of two hundred crore rupees.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (*vii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent, where the value of the international transaction does not exceed a sum of two hundred crore rupees.

Sl. No.	*Eligible International Transaction*	*Circumstances*
(1)	*(2)*	*(3)*
9.	Manufacture and export of core auto components referred to in item (*viii*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.
10.	Manufacture and export of non-core auto components referred to in item (*ix*) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.
11.	Receipt of low value-adding intra-group services in item (*x*) of rule 10TC.	The entire value of the international transaction, including a mark-up not exceeding 5 per cent, does not exceed a sum of ten crore rupees: **Provided** that the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise, is certified by an accountant.]

(3) The provisions of sub-rules (1) and (2) shall apply for the assessment year 2013-14 and four assessment years immediately following that assessment year.

[51][(3A) The provisions of sub-rules (1) and (2A) shall apply for the assessment year 2017-18 and two assessment years immediately following that assessment year:

Provided that where an eligible assessee is eligible to exercise option under sub-rule (2) or, as the case may be, sub-rule (2A) above, the assessee shall have the right to choose the option which is most beneficial to him.]

[51a][*(3B) The provisions of sub-rules (1) and (2A) shall apply for the assessment year 2020-21.*]

(4) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2) [51][or, as the case may be, (2A)] above.

(5) The provisions of sections 92D and 92E in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Procedure.

10TE. (1) For the purposes of exercise of the option for safe harbour, the assessee shall furnish a Form 3CEFA, complete in all respects, to the Assessing Officer on or before the due date specified in *Explanation 2* below sub-section (1) of section 139 for furnishing the return of income for—

51. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

51a. Inserted by the IT (Ninth Amdt.) Rules, 2020, w.r.e.f. 1-4-2020.

(*i*) the relevant assessment year, in case the option is exercised only for that assessment year; or

(*ii*) the first of the assessment years, in case the option is exercised for more than one assessment year:

Provided that the return of income for the relevant assessment year or the first of the relevant assessment years, as the case may be, is furnished by the assessee on or before the date of furnishing of Form 3CEFA.

(2) The option for safe harbour validly exercised shall continue to remain in force for the period specified in Form 3CEFA or a period of five years whichever is less:

Provided that the assessee shall, in respect of the assessment year or years following the initial assessment year, furnish a statement to the Assessing Officer before furnishing return of income of that year, providing details of eligible transactions, their quantum and the profit margins or the rate of interest or commission shown:

Provided further that an option for safe harbour shall not remain in force in respect of any assessment year following the initial assessment year, if—

(*i*) the option is held to be invalid for the relevant assessment year by the Transfer Pricing Officer under sub-rule (11) or by the Commissioner under sub-rule (8) in respect of an objection filed by the assessee against the order of the Transfer Pricing Officer under sub-rule (11), as the case may be; or

(*ii*) the eligible assessee opts out of the safe harbour, for the relevant assessment year, by furnishing a declaration to that effect, to the Assessing Officer:

[52][**Provided also** that in case of the option for safe harbour validly exercised under sub-rule (2A) of rule 10TD, the word "three" shall be substituted for "five":]

[52a][**Provided also** *that nothing contained in this sub-rule shall apply to the option for safe harbour validly exercised under sub-rule (3B) of rule 10TD.*]

(3) On receipt of Form 3CEFA, the Assessing Officer shall verify whether—

(*i*) the assessee exercising the option is an eligible assessee; and

(*ii*) the transaction in respect of which the option is exercised is an eligible international transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(4) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he shall make a reference to the Transfer Pricing Officer for determination of the eligibility of the assessee or the international transaction or both for the purposes of the safe harbour.

(5) For the purposes of sub-rule (4) and sub-rule (10), the Transfer Pricing Officer may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

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52. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

52a. Inserted by the IT (Ninth Amdt.) Rules, 2020, w.r.e.f. **1-4-2020.**

(6) Where—

(*a*) the assessee does not furnish the information or documents or other evidence required by the Transfer Pricing Officer; or

(*b*) the Transfer Pricing Officer finds that the assessee is not an eligible assessee; or

(*c*) the Transfer Pricing Officer finds that the international transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible international transaction,

the Transfer Pricing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee and the Assessing Officer:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(7) If the assessee objects to the order of the Transfer Pricing Officer under sub-rule (6) or sub-rule (11) declaring the option to be invalid, he may file his objections with the Commissioner, to whom the Transfer Pricing Officer is subordinate, within fifteen days of receipt of the order of the Transfer Pricing Officer.

(8) On receipt of the objection referred to in sub-rule (7), the Commissioner shall after providing an opportunity of being heard to the assessee pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(9) In a case where option exercised by the assessee has been held to be valid, the Assessing Officer shall proceed to verify whether the transfer price declared by the assessee in respect of the relevant eligible international transactions is in accordance with the circumstances specified in sub-rule (2) [53][or, as the case may be, sub-rule (2A)] of rule 10TD and, if it is not in accordance with the said circumstances, the Assessing Officer shall adopt the operating profit margin or rate of interest or commission specified in sub-rule (2) [53][or, as the case may be, sub-rule (2A)] of rule 10TD.

(10) Where the facts and circumstances on the basis of which the option exercised by the assessee was held to be valid have changed and the Assessing Officer has reason to doubt the eligibility of an assessee or the international transaction for any assessment year other than the initial assessment year falling within the period for which the option was exercised by the assessee, he shall make a reference to the Transfer Pricing Officer for determination of eligibility of the assessee or the international transaction or both for the purpose of safe harbour.

Explanation.—For purposes of this sub-rule the facts and circumstances include:—

(*a*) functional profile of the assessee in respect of the international transaction;

53. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

(*b*) the risks being undertaken by the assessee;

(*c*) the substantive contractual conditions governing the role of the assessee in respect of the international transaction;

(*d*) the conduct of the assessee as referred to in sub-rule (2) or sub-rule (3) of rule 10TB; or

(*e*) the substantive nature of the international transaction.

(11) The Transfer Pricing Officer on receipt of a reference under sub-rule (10) shall, by an order in writing, determine the validity or otherwise of the option exercised by the assessee for the relevant year after providing an opportunity of being heard to the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(12) Nothing contained in this rule shall affect the power of the Assessing Officer to make a reference under section 92CA in respect of international transaction other than the eligible international transaction.

(13) Where no option for safe harbour has been exercised under sub-rule (1) by an eligible assessee in respect of an eligible international transaction entered into by the assessee or the option exercised by the assessee is held to be invalid, the arm's length price in relation to such international transaction shall be determined in accordance with the provisions of sections 92C and 92CA without having regard to the profit margin or the rate of interest or commission as specified in sub-rule (2) [54][or, as the case may be, sub-rule (2A)] of rule 10TD.

(14) For the purposes of this rule,—

(*i*) no reference under sub-rule (4) shall be made by an Assessing Officer after expiry of a period of two months from the end of the month in which Form 3CEFA is received by him;

(*ii*) no order under sub-rule (6) or sub-rule (11) shall be passed by the Transfer Pricing Officer after expiry of a period of two months from the end of the month in which the reference from the Assessing Officer under sub-rule (4) or sub-rule (10), as the case may be, is received by him;

(*iii*) the order under sub-rule (8) shall be passed by the Commissioner within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (7) is received by him.

(15) If the Assessing Officer or the Transfer Pricing Officer or the Commissioner, as the case may be, does not make a reference or pass an order, as the case may be, within the time specified in sub-rule (14), then the option for safe harbour exercised by the assessee shall be treated as valid.

Safe harbour rules not to apply in certain cases.

10TF. Nothing contained in rules 10TA, 10TB, 10TC, 10TD or rule 10TE shall apply in respect of eligible international transactions entered into with an asso-

54. Inserted by the IT (Twelfth Amdt.) Rules, 2017, w.r.e.f. 1-4-2017.

ciated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

Mutual Agreement Procedure not to apply.

10TG. Where transfer price in relation to an eligible international transaction declared by an eligible assessee is accepted by the income-tax authorities under section 92CB, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or specified territory outside India as referred to in section 90 or 90A.]

[55][*DC.—Safe Harbour Rules for Specified Domestic Transactions*

Definitions.

10TH. For the purposes of this rule and rules 10THA to 10THD,—

(*a*) "Appropriate Commission" shall have the same meaning as assigned to it in sub-section (4)* of section 2[56] of the Electricity Act, 2003 (36 of 2003);

(*b*) "Government company" shall have the same meaning as assigned to it in sub-section (45)* of section 2[56] of the Companies Act, 2013 (18 of 2013);

Eligible assessee.

10THA. The "eligible assessee" means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 10THC, [57][and—

(*i*) is a Government company engaged in the business of generation, [58][supply,] transmission or distribution of electricity; or

(*ii*) is a co-operative society engaged in the business of procuring and marketing milk and milk products.]

Eligible specified domestic transaction.

10THB. The "eligible specified domestic transaction" means a specified domestic transaction undertaken by an eligible assessee and which comprises of :—

(*i*) supply of electricity [59][***]; or

(*ii*) transmission of electricity; or

(*iii*) wheeling of electricity; [60][or

(*iv*) purchase of milk or milk products by a co-operative society from its members.]

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55. Inserted by the IT (Second Amdt.) Rules, 2015, w.e.f. 4-2-2015.
56. For definition of "appropriate Commission" and "Government company", *see* **Appendix.**
57. Substituted for "and is a Government company engaged in the business of generation, transmission or distribution of electricity" by the IT (Nineteenth Amdt.) Rules, 2015, w.e.f. 8-12-2015.
58. Inserted by the IT (Second Amdt.) Rules, 2016, w.e.f. 17-2-2016.
59. Words "by a generating company" omitted, *ibid.*
60. Inserted by the IT (Nineteenth Amdt.) Rules, 2015, w.e.f. 8-12-2015.

*Be read as 'clause'.

Safe Harbour

10THC. (1) Where an eligible assessee has entered into an eligible specified domestic transaction in any previous year relevant to an assessment year and the option exercised by the said assessee is treated to be validly exercised under rule 10THD, the transfer price declared by the assessee in respect of such transaction for that assessment year shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible specified domestic transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

Sl. No.	*Eligible specified domestic Transaction*	*Circumstances*
1	*2*	*3*
1	Supply of electricity, transmission of electricity, wheeling of electricity referred to [61][in clause (*i*), (*ii*) or (*iii*) of rule 10THB, as the case may be].	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined [62][or the methodology for determination of the tariff is approved] by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).
[63][2	Purchase of milk or milk products referred to in clause (*iv*) of rule 10THB.	The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk; and— (*a*) the said rate is irrespective of,— (*i*) the quantity of milk procured; (*ii*) the percentage of shares held by the members in the co-operative society; (*iii*) the voting power held by the members in the society; and (*b*) such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain.]

61. Substituted for "in item (*i*), (*ii*) or (*iii*) of rule 10THB, as the case may be" by the IT (Second Amdt.) Rules, 2016, w.e.f. 17-2-2016.
62. Inserted, *ibid.*
63. Inserted by the IT (Nineteenth Amdt.) Rules, 2015, w.e.f. 8-12-2015.

(3) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rule (1).

(4) The provisions of sections 92D and 92E in respect of a specified domestic transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Procedure

10THD. (1) For the purposes of exercise of the option for safe harbour, the assessee shall furnish a Form 3CEFB, complete in all respects, to the Assessing Officer on or before the due date specified in *Explanation 2* to sub-section (1) of section 139 for furnishing the return of income for the relevant assessment year:

Provided that the return of income for the relevant assessment year is furnished by the assessee on or before the date of furnishing of Form 3CEFB:

[64][**Provided further** that in respect of eligible specified domestic transactions, other than the transaction referred to in clause (*iv*) of rule 10THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of March, 2016:]

[65][**Provided also** that in respect of eligible specified domestic transactions, referred to in clause (*iv*) of rule 10THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of December, 2015.]

(2) On receipt of Form 3CEFB, the Assessing Officer shall verify whether—

(*i*) the assessee exercising the option is an eligible assessee; and

(*ii*) the transaction in respect of which the option is exercised is an eligible specified domestic transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(3) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(4) Where—

(*a*) the assessee does not furnish the information or documents or other evidence required by the Assessing Officer; or

(*b*) the Assessing Officer finds that the assessee is not an eligible assessee; or

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64. Substituted by the IT (Second Amdt.) Rules, 2016, w.e.f. 17-2-2016. Prior to its substitution, second proviso read as under :
"**Provided further** that in respect of eligible specified domestic transactions undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014, Form 3CEFB can be furnished by the assessee on or before the 31st day of March, 2015."

65. Inserted by the IT (Nineteenth Amdt.) Rules, 2015, w.e.f. 8-12-2015.

(*c*) the Assessing Officer finds that the specified domestic transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible specified domestic transaction; or

(*d*) the tariff is not in accordance with the circumstances specified in sub-rule (2) of rule 10THC,

the Assessing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(5) If the assessee objects to the order of the Assessing Officer under sub-rule (4) declaring the option to be invalid, he may file his objections with the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, to whom the Assessing Officer is subordinate, within fifteen days of receipt of the order of the Assessing Officer.

(6) On receipt of the objection referred to in sub-rule (5), the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, shall after providing an opportunity of being heard to the assessee, pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(7) For the purposes of this rule,—

(*i*) no order under sub-rule (4) shall be made by an Assessing Officer after expiry of a period of three months from the end of the month in which Form 3CEFB is received by him;

(*ii*) the order under sub-rule (6) shall be passed by the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be, within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (5) is received by him.

(8) If the Assessing Officer or the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, does not pass an order within the time specified in sub-rule (7), then the option for safe harbour exercised by the assessee shall be treated as valid.]

[66][*DA.—*Application of General Anti Avoidance Rule*

Chapter X-A not to apply in certain cases.

10U. (1) The provisions of Chapter X-A shall not apply to—

(*a*) an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crore;

66. Rules 10U to 10UC inserted by the IT (Seventeenth Amdt.) Rules, 2013, w.e.f. 1-4-2016. For clarification on implementation of GAAR, *see* Circular No. 7/2017, dated 27-1-2017. For details, *see* Taxmann's Master Guide to Income-tax Rules.

*Should be read as *'DD'*.

(*b*) a Foreign Institutional Investor,—

(*i*) who is an assessee under the Act;

(*ii*) who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and

(*iii*) who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;

(*c*) a person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;

(*d*) any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the [67][1st day of April, 2017] by such person.

(2) Without prejudice to the provisions of clause (*d*) of sub-rule (1), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the [68][1st day of April, 2017].

(3) For the purposes of this rule,—

(*i*) "Foreign Institutional Investor" shall have the same meaning as assigned to it in the *Explanation* to section 115AD;

(*ii*) "offshore derivative instrument"[69] shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 issued under Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*iii*) "Securities and Exchange Board of India" shall have the same meaning as assigned to it in clause (*a*) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*iv*) "tax benefit" as defined in clause (*10*) of section 102 and computed in accordance with Chapter X-A shall be with reference to—

(*a*) sub-clauses (*a*) to (*e*) of the said clause, the amount of tax; and

(*b*) sub-clause (*f*) of the said clause, the tax that would have been chargeable had the increase in loss referred to therein been the total income.

Determination of consequences of impermissible avoidance arrangement.

10UA. For the purposes of sub-section (1) of section 98, where a part of an arrangement is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to such part only.

67. Substituted for "30th day of August, 2010" by the IT (Sixteenth Amdt.) Rules, 2016, w.e.f. 22-6-2016.

68. Substituted for "1st day of April, 2015", *ibid.*

69. For definition of "offshore derivative instrument" under SEBI (Foreign Institutional Investor) Regulations, 1995 [now SEBI (Foreign Portfolio Investors) Regulations, 2014], *see* **Appendix.**

Notice, Forms for reference under section 144BA.

10UB. (1) For the purposes of sub-section (1) of section 144BA, the Assessing Officer shall, before making a reference to the Commissioner, issue a notice in writing to the assessee seeking objections, if any, to the applicability of provisions of Chapter X-A in his case.

(2) The notice referred to in sub-rule (1) shall contain the following:—

(*i*) details of the arrangement to which the provisions of Chapter X-A are proposed to be applied;

(*ii*) the tax benefit arising under the arrangement;

(*iii*) the basis and reason for considering that the main purpose of the identified arrangement is to obtain tax benefit;

(*iv*) the basis and the reasons why the arrangement satisfies the condition provided in clause (*a*), (*b*), (*c*) or (*d*) of sub-section (1) of section 96; and

(*v*) the list of documents and evidence relied upon in respect of (*iii*) and (*iv*) above.

(3) The reference by the Assessing Officer to the Commissioner under sub-section (1) of section 144BA shall be in Form No. 3CEG.

(4) Where the Commissioner is satisfied that the provisions of Chapter X-A are not required to be invoked with reference to an arrangement after considering—

(*i*) the reference received from the Assessing Officer under sub-section (1) of section 144BA; or

(*ii*) the reply of the assessee in response to the notice issued under sub-section (2) of section 144BA,

he shall issue directions to the Assessing Officer in Form No. 3CEH.

(5) Before a reference is made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA, he shall record his satisfaction regarding the applicability of the provisions of Chapter X-A in Form No. 3CEI and enclose the same with the reference.

Time limits.

10UC. (1) For the purposes of section 144BA,—

(*i*) no directions under sub-section (3) of section 144BA shall be issued by the Commissioner after the expiry of one month from the end of the month in which the date of compliance of the notice issued under sub-section (2) of section 144BA falls;

(*ii*) no reference shall be made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA after the expiry of two months from the end of the month in which the final submission of the assessee in response to the notice issued under sub-section (2) of section 144BA is received;

(*iii*) the Commissioner shall issue directions to the Assessing Officer in Form No. 3CEH,—

(*a*) in the case referred to in clause (*i*) of sub-rule (4) of rule 10UB, within a period of one month from the end of month in which the reference is received by him; and

(*b*) in the case referred to in clause (*ii*) of sub-rule (4) of rule 10UB, within a period of two months from the end of month in which the final submission of the assessee in response to the notice issued under sub-section (2) of section 144BA is received by him.]

[70][*DE.—Approving Panel*

Reference to the Approving Panel.

10UD. A reference under sub-section (4) of section 144BA to an Approving Panel shall be,—

(*i*) made in Form No. 3CEIA along with a copy of Form No. 3CEI and such other documents which the Principal Commissioner or the Commissioner deems fit; and

(*ii*) submitted in four sets, either in Hindi or English.

Procedure before the Approving Panel.

10UE. (1) A reference received under rule 10UD shall be caused to be circulated by the Chairperson of the said Panel among the other members within seven days from the date of receipt of such reference.

(2) The Chairperson of the Approving Panel shall cause to be issued the notice to the Assessing Officer and the assessee affording an opportunity of being heard specifying therein the date and place of hearing.

(3) The meetings of the Approving Panel shall take place at such place as the Approving Panel may decide.

Remuneration.

10UF. (1) For attending the meeting of an Approving Panel, the Chairperson and other members of the said Panel shall be entitled to—

(*i*) a sitting fee of six thousand rupees per day; and

(*ii*) travelling allowances including transportation charges for local travel and daily allowances (including accommodation) as admissible to an officer of the rank of Special Secretary to the Government of India.

(2) The expenditure of an Approving Panel shall be met from the budgetary grants of the Department of Revenue in the Ministry of Finance of the Central Government.]

[71][**Guidelines for application of section 9A.**

10V. (1) Where the investment in the fund has been made directly by an institutional entity, the number of members and the participation interest in the fund shall be determined by looking through the said entity, if it,—

(*a*) independently satisfies the conditions mentioned in clauses (*c*), (*e*), (*f*) and (*g*) of sub-section (3) of section 9A;

(*b*) has been set up solely for the purpose of pooling funds and investment thereof; and

70. Rules 10UD to 10UF inserted by the IT (Eighth Amdt.) Rules, 2019, w.e.f. 17-9-2019.

71. Rules 10V, 10VA and 10VB inserted by the IT (Fifth Amdt.) Rules, 2016, w.e.f. 15-3-2016.

(*c*) is resident of a country or specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into [72][or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf].

(2) For the purposes of clause (*e*) of sub-section (3) of section 9A, where direct investor in the fund is a person other than a natural person, the fund shall undertake appropriate due diligence to ascertain the indirect participation, if any, of a person resident in India and the extent thereof:

Provided that where such direct investor is, the Government or the Central bank or a sovereign fund or a multilateral agency or appropriately regulated investor in the form of pension fund or University fund or a bank or collective investment vehicles such as mutual funds, the fund shall obtain a declaration in writing from the direct investor regarding the participation, if any, of a person resident in India and the indirect participation in the fund of any person resident in India may be determined by the fund on the basis of such declaration.

Explanation.—For the purposes of this sub-rule an investor shall be considered to be appropriately regulated if it is regulated or supervised by the securities market regulator or the banking regulator of the country outside India of which it is resident, in the same capacity in which it has made investment in the fund.

(3) A fund shall not be denied the benefit of being an eligible fund for the purposes of section 9A, if,—

(*a*) non-fulfilment of any of the conditions specified in clauses (*c*), (*d*) and (*e*) of sub-section (3) of section 9A,—

(*i*) is for the reasons beyond the control of the fund and it does not exceed a period of ninety days;

(*ii*) does not exceed a period of eighteen months beginning from the date on which the fund is setup or is not beyond the final closing of the fund, whichever is earlier, and *bona fide* efforts are made to satisfy the conditions specified in the clauses (*c*), (*d*) and (*e*) of sub-section (3) of section 9A;

(*iii*) is for the reason that the fund is in the process of being wound up and it does not exceed a period of one year beginning from the date on which the process of winding has begun; or

(*b*) there is delay in furnishing the statement referred to in sub-section (5) of section 9A and such delay does not exceed a period of ninety days.

(4) For the purposes of clause (*k*) of sub-section (3) of section 9A, a fund shall be said to be controlling or managing a business carried out by any entity, if the fund directly or indirectly holds such rights in, or in relation to, the entity, which results in the fund holding the share capital or a voting power or an interest exceeding twenty six per cent of the total share capital of, or as the case may be, total voting power or total interest in, the entity.

(5) Subject to the provisions of sub-rules (6), (7) and (8), for the purposes of determining the arm's length price in respect of any remuneration, paid by the eligible investment fund to an eligible fund manager, referred to in clause (*m*) of sub-section (3) of section 9A, the provisions of the Act shall apply as if,—

72. Inserted by the IT (Thirty-second Amdt.) Rules, 2016, w.e.f. 21-11-2016.

(*i*) the transaction between the eligible investment fund and the eligible fund manager is an international transaction; and

(*ii*) the eligible investment fund and the eligible fund manager are associated enterprises.

(6) The fund manager shall keep and maintain information and documents as required under section 92D and the rules made thereunder.

(7) The fund manager shall, in addition to any report required to be furnished by it under section 92E, obtain a report from the accountant in respect of activity undertaken for the fund and furnish such report on or before the specified date in the Form No. 3CEJ duly verified by such accountant in the manner indicated therein and all the provisions of the Act shall apply as if it is a report to be furnished under section 92E.

Explanation.—For the purposes of this sub-rule "specified date" shall have the same meaning as assigned to "due date" in the *Explanation 2* below sub-section (1) of section 139.

(8) Where the fund manager has either not maintained the document or information as required under section 92D and the rules made thereunder or not produced the document or information before the Assessing Officer or the Transfer Pricing Officer, as the case may be, then, the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall, before determining the arm's length price for the purposes of clause (*m*) of sub-section (3) of section 9A, provide an opportunity to the fund to produce the information and documents necessary for the determination of the arm's length price and the arm's length price shall be determined after considering the documents or information, if any, provided by the fund.

(9) If in any previous year, it is determined that the remuneration paid or payable by a fund to the fund manager is not in accordance with the provisions of clause (*m*) of sub-section (3) of section 9A, then the benefits of section 9A shall not be denied to the fund which otherwise satisfies all other conditions specified in section 9A.

(10) Nothing contained in sub-rule (9) shall apply to a fund if the remuneration paid or payable by the fund to the fund manager has been determined to be not at arm's length price,—

(*a*) for a period of three previous years in succession; or

(*b*) for any three out of the preceding four previous years.

[72a][*(11) The provisions of sub-rule (5) to sub-rule (10) shall not apply on or after the 1st day of April, 2019.*

(12) The amount of remuneration to be paid by the fund to a fund manager, referred to in clause (m) *of sub-section (3) of section 9A, shall be calculated in the following manner, namely:—*

(i) *In case where the fund is Category-I foreign portfolio investor referred to in item* (i), *item* (ii) *or item* (iii), *and sub-item* (III) *of item* (iv) *of clause* (a) *of regulation 5 of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019*[72b], *made under the Securities and*

72a. Inserted by the IT (Tenth Amdt.) Rules, 2020, w.e.f. **27-5-2020**.

72b. For text of regulation 5 of the SEBI (Foreign Portfolio Investors) Regulations, 2019, *see* **Appendix**.

Exchange Board of India Act, 1992 (15 of 1992), the amount of remuneration shall be 0.10 per cent of the asset under management.

(ii) *In other cases, the amount of remuneration shall be,—*

(a) *0.30 per cent of the asset under management; or*

(b) *10 per cent of profits derived by the fund in excess of the specified hurdle rate from the fund management activity undertaken by the fund manager, where it is entitled only to remuneration linked to the income or profits derived by the fund; or*

(c) *50 per cent of the management fee, whether in the nature of fixed charge or linked to the income or profits derived by the fund from the management activity undertaken by the fund manager, paid by such fund in respect of the fund management activity undertaken by the fund manager as reduced by the amount incurred towards operational expenses including distribution expenses, if any:*

Provided *that the provisions of this sub-clause shall apply only in case the fund is also making payment of management fee to any other fund manager :*

Provided further *that in case where the amount of remuneration is lower than the amount arrived at under clause* (i) *or clause* (ii), *the fund may, at its option, apply to the Member, Central Board of Direct Taxes referred to in sub-rule (2) of rule 10VA seeking approval of the Board under said rule for that lower amount to be the amount of remuneration, and, on receipt of such application the Board may, after satisfying itself considering the relevant facts, approve such lower amount to be the amount of remuneration:*

[72c][**Provided also** *that the provisions of sub-rules (3) to (12) of rule 10VA shall,* mutatis mutandis, *apply to the application made under the second proviso as they apply to application made under sub-rule (2) of the said rule:*

Provided also *that the provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on the 1st day of April, 2021, and made on or before the 1st day of February, 2021.*]

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

(a) *"asset under management" means the annual average of the monthly average of the opening and closing balances of the value of such part of the fund which is managed by the fund manager;*

(b) *"management fee" means the amount as mentioned in the certificate obtained from an accountant, as defined in clause* (i) *of* Explanation *to rule 11UB, for this purpose;*

(c) *"specified hurdle rate" means a pre-defined threshold beyond which the fund agrees to pay a share of the profits earned by the fund from the fund management activity undertaken by the fund manager.*

(13) The fund manager shall, in addition to any report required to be furnished by it under section 92E, obtain a report from the accountant in respect of activity undertaken for the fund and furnish such report on or before the specified date in the Form No. 3CEJA duly verified by such accountant in the manner indicated therein and all the provisions of the Act shall apply as if it is a report to be furnished under section 92E.]

72c. Inserted by the IT (Second Amdt.) Rules, 2021, w.e.f. **9-3-2021**.

[73][73a][*(14)*] For the purposes of clause (*a*) of sub-section (4) of section 9A, a fund manager shall not be considered to be a connected person of the fund merely for the reason that the fund manager is undertaking fund management activity of the said fund.

[73a][*(15)*] For the purposes of clause (*d*) of sub-section (4) of section 9A, any remuneration paid to the fund manager, by the fund, which is in the nature of fixed charge and not dependent on the income or profits derived by the fund from the fund management activity undertaken by the fund manager shall not be included in the profits referred to in the said clause, if the conditions specified in clause (*m*) of sub-section (3) of section 9A are satisfied and such fixed charge has been agreed by the fund manager in writing at the beginning of the relevant fund management activity.]

Approval of the fund.

10VA. (1) An investment fund may at its option seek approval of the Board regarding its eligibility for the purposes of section 9A.

(2) The fund seeking approval may make an application in writing, enclosing relevant documents and evidence, to [74][the Member, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi having supervision and control over the work of Foreign Tax and Tax Research (FT&TR) Division].

(3) The application under sub-rule (2) shall be made three months before the beginning of the previous year for which the fund seeks the approval.

(4) A committee as notified by the Board, shall examine the application and submit its recommendations regarding grant of approval or otherwise and the conditions, if any, subject to which such an approval is to be granted.

(5) The committee[75] referred to in sub-rule (4) shall be headed by a Principal Chief Commissioner or Chief Commissioner, as the case may be, and consist of two other Income-tax authorities not below the rank of Commissioner.

(6) The committee on behalf of the Board may, before giving its recommendation, call for such documents or information from the investment fund as it may consider necessary and may call for further details or information from the fund as well as from the Income-tax authorities and other Departments or agencies, as it may deem fit.

(7) The Board, on the basis of the recommendations of the committee, shall, within sixty days from the end of the month in which the application under sub-rule (2) has been made,—

(*i*) by an order in writing, grant approval to the fund subject to such conditions as it may deem fit; or

(*ii*) for reasons to be recorded in writing, reject the application.

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73. Inserted by the IT (Thirty-second Amdt.) Rules, 2016, w.r.e.f. 15-3-2016.

73a. Sub-rules (11) and (12) renumbered as sub-rules (14) and (15), respectively, by the IT (Tenth Amdt.) Rules, 2020, w.e.f. **27-5-2020.**

74. Substituted for "Member (Income-tax), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi" by the IT (Fifth Amdt.) Rules, 2018, w.e.f. 11-4-2018.

75. For notified Committee, *see* Taxmann's Master Guide to Income-tax Rules.

(8) The approval once granted, subject to any condition specified in this behalf, shall be applicable for the previous year referred to in sub-rule (3) and subsequent previous years unless it is withdrawn by the Board.

(9) The benefit of section 9A shall not be denied to an eligible investment fund, which has been granted approval, for any previous year for which the approval is in force and has not been withdrawn.

(10) The Board may withdraw the approval granted to any fund, if it is satisfied that,—

(*a*) the approval has been obtained on the basis of misrepresentation of facts or fraud; or

(*b*) the conditions mentioned in section 9A are not fulfilled; or

(*c*) any condition subject to which approval was granted, has been violated.

(11) No order rejecting the application or withdrawing the approval, shall be passed without giving an opportunity of being heard.

(12) A copy of the order rejecting the application or withdrawing the approval shall be communicated to the fund as well as the Assessing Officer and the Principal Commissioner or Commissioner having jurisdiction over the fund.

Statement to be furnished by the fund.

10VB. (1) The statement required to be furnished under sub-section (5) of section 9A shall be furnished for every financial year by the eligible investment fund in Form No. 3CEK duly verified in the manner indicated therein, to the Assessing Officer who has the jurisdiction over the fund or would have had the jurisdiction had such fund been assessable to tax in India but for the provision of section 9A.

(2) The annual statement referred to in sub-rule (1) shall be furnished electronically under digital signature.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing of annual statement in the manner specified in sub-rule (2).]

[76]**Determination of income from transactions with non-residents.**

11. [*Omitted by the IT (Twenty-first Amdt.) Rules, 2001, w.e.f. 21-8-2001.*]

E.—Deductions to be made in computing total income

[77][**Medical authority for certifying autism, cerebral palsy and multiple disabilities and certificate to be obtained from the medical authority for the purposes of deduction under section 80DD and section 80U.**

11A. (1) For the purposes of clause (*e*) of the *Explanation* to sub-section (4) of section 80DD and clause (*d*) of the *Explanation* to sub-section (2) of section

76. Prior to its omission, rule 11 was amended by the IT (Amdt.) Rules, 1967, read as under :

"11. *Determination of income from transactions with non-residents.*—The profits and gains derived from any business carried on in the manner referred to in section 92 may be determined for the purposes of assessment to income-tax according to rule 10."

(Contd. on p. I.190)

80U, the medical authority for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (*a*), (*c*), (*h*), (*j*) and (*o*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)[78], shall consist of the following,—

(*i*) a Neurologist having a degree of Doctor of Medicine (MD) in Neurology (in case of children, a Paediatric Neurologist having an equivalent degree); or

(*ii*) a Civil Surgeon or Chief Medical Officer in a Government hospital.

(2) For the purposes of sub-section (4) of section 80DD and sub-section (2) of section 80U, the assessee shall furnish along with the return of income, a copy of the certificate issued by the medical authority,—

(*i*) in Form No. 10-IA, where the person with disability or severe disability is suffering from autism, cerebral palsy or multiple disability; or

(*ii*) in the form prescribed *vide* notification No. 16-18/97-NL1, dated the 1st June, 2001[79] published in the Gazette of India, Part I, Section 1, dated the 13th June, 2001 and Notification No. 16-18/97-NL1, dated the 18th February, 2002[79] published in the Gazette of India, Part I, Section 1, dated the 27th February, 2002 and notified under the Guidelines for evaluation of various disabilities and procedure for certification, keeping in view the [80]Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), in any other case.

(Contd. from p. 1.189)

77. Substituted by the IT (Eighteenth Amdt.) Rules, 2005, w.e.f. 29-6-2005. Prior to its substitution, rule 11A was substituted by the IT (Twentieth Amdt.) Rules, 2003, w.r.e.f. 1-4-2003, read as under :

"11A. *Certificate to be obtained from the medical authority for the purposes of deduction under section 80DD and section 80U.*—(1) For the purposes of sub-section (4) of section 80DD and sub-section (2) of section 80U, the assessee shall furnish along with the return of income, a copy of the certificate issued by the medical authority in the form prescribed *vide* Notification No. 16-18/97-NL1, dated 1st June, 2001, published in the Gazette of India, Part I, section 1, dated 13th June, 2001 and Notification No. 16-18/97-NL1, dated 18th February, 2002 published in the Gazette of India, Part I, section 1, dated 27th February, 2002 and notified under the Guidelines for evaluation of various disabilities and procedure for certification, keeping in view the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).

(2) Where the condition of disability is temporary and requires reassessment after a specified period, the certificate shall be valid for the period starting from the assessment year relevant to the previous year during which the certificate was issued and ending with the assessment year relevant to the previous year during which the validity of the certificate expires."

Earlier rule 11A was inserted by the IT (Third Amdt.) Rules, 1992, w.r.e.f. 1-4-1991. Original rule 11A was inserted by the IT (Amdt.) Rules, 1967 and later on amended by the IT (Second Amdt.) Rules, 1968/1976, IT (Seventh Amdt.) Rules, 1980, IT (Amdt.) Rules, 1982 and omitted by the IT (Ninth Amdt.) Rules, 1983, w.e.f. 1-4-1984.

78. For meaning of "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability", *see* **Appendix.**

79. For prescribed form and Guidelines, *see* Taxmann's Master Guide to Income-tax Rules.

80. Now repealed by the Rights of Persons with Disabilities Act, 2016 (*see* **Appendix**). For Guidelines framed under new Act, *see* Taxmann's Master Guide to Income-tax Rules.

(3) Where the condition of disability is temporary and requires reassessment after a specified period, the certificate shall be valid for the period starting from the assessment year relevant to the previous year during which the certificate was issued and ending with the assessment year relevant to the previous year during which the validity of the certificate expires.]

[81][**Requirements for approval of an institution or fund under section 80G.**

11AA. (1) For approval under clause (*vi*) of sub-section (5) of section 80G, the institution or fund (hereinafter referred to as 'the applicant') shall be required to file application in Form No. 10G, which shall be verified by the person who is authorised to verify the return of income under section 140, as applicable to the assessee.

(2) Form No. 10G shall be furnished electronically,—

(*i*) under digital signature, if the return of income is required to be furnished under digital signature; or

(*ii*) through electronic verification code in a case not covered under clause (*i*).

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure,

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81. Substituted by the IT (Sixth Amdt.) Rules, 2019, w.e.f. 5-11-2019. Prior to its substitution, rule 11AA, as inserted by the IT (Seventeenth Amdt.) Rules, 1992, w.e.f. 21-9-1992 and later on amended by the IT (Eleventh Amdt.) Rules, 2014, w.e.f. 10-11-2014, read as under :

"11AA. *Requirements for approval of an institution or fund under section 80G.*—(1) The application for approval of any institution or fund under clause (*vi*) of sub-section (5) of section 80G shall be in Form No. 10G and shall be made in triplicate.

(2) The application shall be accompanied by the following documents, namely :—

(*i*) Copy of registration granted under section 12A or copy of notification issued under section 10(*23*) or 10(*23C*) ;

(*ii*) Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;

(*iii*) Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

(3) The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.

(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (*i*) to (*v*) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid".

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (*i*) to (*v*) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the end of the month in which such application was made :

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded."

"See also Circular No. 7/2010, dated 27-10-2010 (Period of validity of approval).

standards and procedure of furnishing and verification of Form No. 10G and shall be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said form so furnished.

(4) The Principal Commissioner or Commissioner may call for such further documents or information from applicant or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of the applicant.

(5) Where the Principal Commissioner or Commissioner is satisfied that all the conditions laid down in clauses (*i*) to (*v*) of sub-section (5) of section 80G are fulfilled by the applicant, he shall record such satisfaction in writing and grant approval under clause (*vi*) of sub-section (5) of section 80G.

(6) Where the Principal Commissioner or Commissioner is satisfied that one or more of the conditions laid down in clauses (*i*) to (*v*) of sub-section (5) of section 80G are not fulfilled, he shall record the reasons in writing and reject the application for approval after giving the applicant an opportunity of being heard.

(7) The order granting approval under clause (*vi*) of sub-section (5) of section 80G or rejecting the application shall be passed within the period of six months from the end of the month in which such application was received.]

[82][Conditions for allowance for deduction under section 80GG.][83]

11B. The deduction to be allowed under section 80GG in respect of any expenditure incurred by an assessee towards payment of rent for any furnished or unfurnished accommodation occupied by him for the purposes of his own residence shall be allowed subject to the condition that tbe assessee files the declaration in Form No. 10BA.]

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82. Substituted by the IT (Nineteenth Amdt.) Rules, 1998, w.e.f. 13-10-1998. Prior to its substitution, rule 11B, was inserted by the IT (Fourth Amdt.) Rules, 1976, w.e.f. 2-4-1976 and amended by the IT (Third Amdt.) Rules, 1981, read as under :

'11B. *Condition for allowance of deduction under section 80GG.*—The deduction to be allowed under section 80GG in respect of any expenditure incurred by an assessee towards payment of rent for any furnished or unfurnished accommodation occupied by him for the purposes of his own residence shall be allowed subject to the condition that the accommodation is situated in any one of the following places, namely :—

(*i*) Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Calcutta, Coimbatore, Delhi, Faridabad, Gwalior (Lashkar), Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lucknow, Ludhiana City, Madurai, Nagpur, Patna, Poona, Srinagar, Surat, Vadodara (Baroda) or Varanasi (Benaras) or the urban agglomeration of each of such places ; or

(*ii*) Bombay, Calicut, Cochin, Ghaziabad, Hubli-Dharwar, Madras, Sholapur, Trivandrum or Vishakhapatnam.

Explanation : "Urban agglomeration", in relation to a place referred to in this rule, means the area for the time being included in the urban agglomeration of such place for the purpose of grant of house rent allowance by the Central Government to its employees under the orders issued by it from time to time in this regard.'

83. *See* section 295(2)(*ee*).

[84][Prescribed fields for the purposes of deduction in respect of remuneration received from foreign employers or Indian concerns under section 80RRA.

11C. For the purposes of clause (*vi*) of *Explanation* [85][2] to section 80RRA, the prescribed fields shall be,—

(*a*) the profession of actuaries;

(*b*) banking;

(*c*) insurance; and

(*d*) journalism.]

Permanent physical disabilities for the purposes of deduction under section 80U.

11D. [86][*Omitted by the IT (Twentieth Amdt.) Rules, 2003, w.r.e.f. 1-4-2003.*]

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84. Substituted by the IT (Second Amdt.) Rules, 1988, w.e.f. 31-5-1988. Earlier, rule 11C was inserted by the IT (Sixth Amdt.) Rules, 1976. No deduction under section 80RRA is allowable from the assessment year 2005-06 onwards. Consequently, rule 11C has become inoperative with effect from 1-4-2005.
In view of the use of the word "remuneration" instead of "salary" in section 80RRA, fees received by consultant or technician are also covered under that provision - *CBDT* v. *Aditya V. Birla* [1988] 170 ITR 137 (SC). Nature of service rendered abroad need not be as technician; what is required is that person rendering service is a technician - *Taru Jethmal Lalvani* v. *Secretary, Ministry of Finance, Department of Revenue* [1990] 185 ITR 418 (Bom.). Contract between parties need not establish employer-employee relationship - *Smt. Kunti Verman* v. *CBDT* [1996] 220 ITR 120 (Delhi). It is not necessary for a technician to be physically outside India for purpose of claiming deduction for any service rendered by him outside India - *A.S. Mani* v. *Union of India* [2003] 131 Taxman 717/264 ITR 5 (Kar.). For details, *see* Taxmann's Master Guide to Income-tax Rules.

85. Figure "2" should be omitted as there is only one *Explanation* to section 80RRA.

86. Prior to its omission, rule 11D, as inserted by the IT (Fourth Amdt.) Rules, 1985, w.e.f. 1-4-1985 and later on substituted by the IT (Third Amdt.) Rules, 1992, w.r.e.f. 1-4-1990/ 1-4-1992, read as under :
"11D. *Permanent physical disabilities for the purposes of deduction under section 80U.*—For the purposes of section 80U,—
(*i*) permanent physical disability shall be regarded as a permanent physical disability if it falls in any one of the categories specified below, namely :—
(*a*) permanent physical disability of more than 50 per cent in one limb; or
(*b*) permanent physical disability of more than 60 per cent in two or more limbs; or
(*c*) permanent deafness with hearing impairment of 71 decibels and above; or
(*d*) permanent and total loss of voice ;
(*ii*) mental retardation shall be regarded as a mental retardation if intelligence quotient is less than 50 on a test with a mean of 100 and a standard deviation of 15 such as the Wechsler scale;
(*iii*) blindness shall be regarded as a permanent physical disability, if it is incurable and falls in any one of the categories specified below, namely :—

	All with corrections	
	Better eye	*Worse eye*
(*a*)	6/60 - 4/60 or Field of vision 110 - 20	3/60 to *Nil*

(Contd. on p. I.194)

[87][Specified diseases and ailments for the purpose of deduction under section 80DDB.

11DD. (1) For the purposes of section 80DDB, the following shall be the eligible diseases or ailments :

(*i*) Neurological Diseases where the disability level has been certified to be of 40% and above,—

(*a*) Dementia;

(*b*) Dystonia Musculorum Deformans;

(*c*) Motor Neuron Disease;

(*d*) Ataxia;

(Contd. from p. 1.193)

	All with corrections	
	Better eye	*Worse eye*
(*b*)	3/60 to 1/60 or Field of vision 100	F.C. at 1 foot to *Nil*
(*c*)	F.C. at 1 foot to *Nil* or Field of vision 100	F.C. at 1 foot to *Nil* or Field of vision 100
(*d*)	Total absence of sight	Total absence of sight."

87. Substituted by the IT (Twenty-fifth Amdt.) Rules, 2003, w.r.e.f. 1-4-2003. Prior to its substitution, rule 11DD, as inserted by the IT (Third Amdt.) Rules, 1997, w.e.f. 11-3-1997, read as under :

"11DD. *Specified diseases and ailments for the purpose of deduction under section 80DDB.*— (1) For the purposes of section 80DDB, the specified diseases and ailments shall be as under :—

(*i*) Neurological diseases
- (*a*) Dementia
- (*b*) Dystonia Musculorum Deformans
- (*c*) Motor Neuron Disease
- (*d*) Ataxia
- (*e*) Chorea
- (*f*) Hemiballismus
- (*g*) Aphasia
- (*h*) Parkinsons Disease

Explanation.—For the purposes of this rule the abovementioned diseases shall be treated as chronic and protracted, if the disability has been certified to be 40% and above.

(*ii*) Cancer

(*iii*) Full Blown Acquired Immuno-Deficiency Syndrome (AIDS)

(*iv*) Chronic Renal failure

(*v*) Hemophilia

(*vi*) Thalassaemia.

(2) For the purposes of section 80DDB, the prescribed authority shall be any doctor registered with the Indian Medical Association with post-graduate qualifications.

(3) The certificate shall be from the prescribed authority in Form No. 10-I."

(*e*) Chorea;

(*f*) Hemiballismus;

(*g*) Aphasia;

(*h*) Parkinsons Disease;

(*ii*) Malignant Cancers;

(*iii*) Full Blown Acquired Immuno-Deficiency Syndrome (AIDS);

(*iv*) Chronic Renal failure;

(*v*) Hematological disorders:

(*i*) Hemophilia;

(*ii*) Thalassaemia.

[88][(2) The prescription in respect of the diseases or ailments specified in sub-rule (1) shall be issued by the following specialists:—

(*a*) for diseases or ailments mentioned in clause (*i*) of sub-rule (1) - a Neurologist having a Doctorate of Medicine (D.M.) degree in Neurology or any equivalent degree, which is recognised by the Medical Council of India;

(*b*) for diseases or ailments mentioned in clause (*ii*) of sub-rule (1) - an Oncologist having a Doctorate of Medicine (D.M.) degree in Oncology or any equivalent degree which is recognised by the Medical Council of India;

88. Substituted by the IT (Fifteenth Amdt.) Rules, 2015, w.e.f. 12-10-2015. Prior to their substitution, sub-rules (2) and (3) read as under :

"(2) The certificate in respect of the diseases or ailments specified in sub-rule (1) shall be issued by the following specialists working in a Government hospital—

(*a*) for diseases or ailments mentioned in clause (*i*) of sub-rule (1) - a Neurologist having a Doctorate of Medicine (D.M.) degree in Neurology or any equivalent degree, which is recognised by the Medical Council of India;

(*b*) for diseases or ailments mentioned in clause (*ii*) of sub-rule (1) - an Oncologist having a Doctorate of Medicine (D.M.) degree in Oncology or any equivalent degree which is recognised by the Medical Council of India;

(*c*) for diseases or ailments mentioned in clause (*iv*) of sub-rule (1) - a Nephrologist having a Doctorate of Medicine (D.M.) degree in Nephrology or a Urologist having a Master of Chirurgiae (M.Ch.) degree in Urology or any equivalent degree, which is recognised by the Medical Council of India;

(*d*) for diseases or ailments mentioned in clause (*v*) of sub-rule (1) - a specialist having a Doctorate of Medicine (D.M.) degree in Hematology or any equivalent degree, which is recognised by the Medical Council of India :

Provided that where in respect of any diseases or ailments specified in sub-rule (1), no specialist has been specified or where the specialist specified is not posted in the Government hospital in which the patient is receiving the treatment, such certificate, with prior approval of the Head of that hospital, may be issued by any other specialist working full-time in that hospital and having a post-graduate degree in General or Internal Medicine, which is recognised by the Medical Council of India.

(3) The certificate from the prescribed authority to be furnished along with the return of income shall be in Form No. 10-I."

(*c*) for diseases or ailments mentioned in clause (*iii*) of sub-rule (1) - an specialist having a post-graduate degree in General or Internal Medicine or any equivalent degree which is recognised by the Medical Council of India;

(*d*) for diseases or ailments mentioned in clause (*iv*) of sub-rule (1) - a Nephrologist having a Doctorate of Medicine (D.M.) degree in Nephrology or a Urologist having a Master of Chirurgiae (M.Ch.) degree in Urology or any equivalent degree, which is recognised by the Medical Council of India;

(*e*) for diseases or ailments mentioned in clause (*v*) of sub-rule (1) - a specialist having a Doctorate of Medicine (D.M.) degree in Hematology or any equivalent degree, which is recognised by the Medical Council of India:

Provided that where in respect of any diseases or ailments specified in sub-rule (1), the patient is receiving the treatment in a Government hospital, the prescription may be issued by any specialist working full-time in that hospital and having a post-graduate degree in General or Internal Medicine or any equivalent degree, which is recognised by the Medical Council of India.

(3) The prescription referred to in sub-rule (2) shall contain the name and age of the patient, name of the disease or ailment along with the name, address, registration number and the qualification of the specialist issuing the prescription:

Provided that where the patient is receiving the treatment in a Government hospital, such prescription shall also contain the name and address of the Government hospital.]]

Application for approval of agreement under section 80-O.

[89]**11E.** [*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

[90]**[Guidelines for specifying industrially backward districts for the purpose of deduction under** [91]**[sub-section (5) of section 80-IB].**

11EA. [92][(1)] In specifying a district for notification as an industrially backward district [92][of Category 'A'] under [91][sub-section (5) of section 80-IB], the Central Government shall satisfy itself that,—

(*a*) the district has a "Total Weighted Index Count" of 250 or less in the "All India Gradation List" appended in Appendix III of these rules; or

(*b*) the district is a "no industry" district as indicated in the "All India Gradation List" mentioned in clause (*a*); or

89. Prior to its omission, rule 11E, as inserted by the IT (Tenth Amdt.) Rules, 1988, w.e.f. 1-4-1989, read as under :
"11E. *Application for approval of agreement under section 80-O.*—The application to the Chief Commissioner or the Director General, as the case may be, under the first proviso to section 80-O for approval of any agreement shall be in Form No. 10F."

90. Inserted by the IT (Ninth Amdt.) Rules, 1997, w.r.e.f. 1-10-1994.

91. Substituted for "sub-clause (*c*) of clause (*iv*) of sub-section (2) of section 80-IA" by the IT (Seventeenth Amdt.) Rules, 1999, w.e.f. 1-4-2000.

92. Inserted by the IT (Eleventh Amdt.) Rules, 1997, w.r.e.f. 1-10-1994. *See* Notification No. SO 440(E), dated 15-6-1999 (Notified Industrially Backward Districts). For details, *see* Taxmann's Master Guide to Income-tax Rules.

(*c*) the district is an inaccessible hill area district as indicated in the Eighth Plan Document and has a "Total Weighted Index Count" of 500 or less in the "All India Gradation List" mentioned in clause (*a*); or

(*d*) the district has no railhead as on 1-4-1994 and has a "Total Weighted Index Count" of 500 or less in the "All India Gradation List" mentioned in clause (*a*).

Explanation: A district notified under these rules, shall be based on the districts as they stood in the Census Report of 1991. Where a district notified under these rules, is reorganised, either by split or otherwise, after the Census Report of 1991 all the areas comprised in the district as it existed in the Census Report of 1991 will qualify for the purpose of these rules.]

[93][(2) In specifying a district for notification as an industrially backward district of category 'B' under [94][sub-section (5) of section 80-IB,] the Central Government shall satisfy itself that,—

(*a*) the district has a "Total Weighted Index Count" of more than 250 but less than or equal to 500 in the "All India Gradation List" as indicated in the "All India Gradation List" mentioned in clause (*a*) of sub-rule (1):

Provided that no district shall be notified under this sub-rule if such district has been notified under sub-rule (1).]

[95][*EE.—Statement under the simplified procedure for taxation of retail traders, etc., under Chapter XII-C*

Form of statement to be furnished under section 115K.

11EE. [96][*Omitted by the IT (Thirty-second Amdt.) Rules, 1999, w.e.f. 19-11-1999.*]

[97][*F.—National Committee for Promotion of Social and Economic Welfare*

General.

11F. In this sub-part "National Committee" means the National Committee defined in section 35AC.

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93. Inserted by the IT (Eleventh Amdt.) Rules, 1997, w.r.e.f. 1-10-1994.

94. Substituted for "sub-clause (*c*) of clause (*iv*) of sub-section (2) of section 80-IA" by the IT (Seventeenth Amdt.) Rules, 1999, w.e.f. 1-4-2000.

95. Inserted by the IT (Fourteenth Amdt.) Rules, 1992, w.e.f. 2-7-1992.

96. Prior to its omission, rule 11EE, as inserted by the IT (Fourteenth Amdt.) Rules, 1992, w.e.f. 2-7-1992 and later amended by the IT (Eighteenth Amdt.) Rules, 1992, w.e.f. 30-9-1992, IT (Twelfth Amdt.) Rules, 1993, w.e.f. 13-8-1993, IT (Sixth Amdt.) Rules, 1994, w.e.f. 7-6-1994, IT (Thirteenth Amdt.) Rules, 1995, w.e.f. 19-7-1995 and IT (Fifth Amdt.) Rules, 1996, w.e.f. 21-11-1996, read as under:

"11EE. *Form of statement to be furnished under section 115K.*—(1) The statement which is required to be submitted by any person under the provisions of section 115K shall be in Form No. 4A and shall be verified in the manner indicated therein.

(2) The form shall be in duplicate and shall also serve as a challan for the payment of tax under the provisions of sub-section (3) of section 115K."

97. Inserted by the IT (First Amdt.) Rules, 1992, w.e.f. 2-1-1992. No deduction under section 35AC shall be allowed in respect of any assessment year commencing on or after 1-4-2018.

Composition of the National Committee.

11G. (1) The National Committee shall consist of fourteen members appointed by the Central Government from amongst persons of eminence in public life.

(2) The term of office of a member shall be for three years commencing on the date of notification.

[98][(3) One of the members of the National Committee shall be appointed as Chairman by the Central Government. In the event of vacancy of the office of Chairman for any reason and until a new Chairman is appointed, no meeting of the National Committee shall be held :

Provided that if for any meeting, the Chairman is absent, the members present for the meeting may elect one amongst themselves to preside over the day's sitting.]

(4) The National Committee may appoint one or more sub-committees from among its members for looking into specific areas of activity from time to time. The National Committee may invite any expert to examine any matter of technical nature.

Headquarters and Secretariat.

11H. (1) The headquarters of the National Committee shall be at New Delhi. Its sittings shall take place at New Delhi or such other place as the Central Government may decide.

(2) Secretariat to the Committee will be provided by the Department of Revenue, Ministry of Finance, Government of India and a Joint Secretary to the Government of India, in the Department of Revenue shall act as Secretary to the Committee.

Functions.

11-I. The functions of the National Committee shall be—

(*i*) to approve associations and institutions for the purpose of carrying out any eligible project or scheme; and

(*ii*) to recommend to the Central Government projects and schemes of any company including a public sector company, a local authority or an approved association or institution, for being notified as eligible projects or schemes for the purposes of section 35AC.

Guidelines for approval of associations and institutions.

11J. In according approval to any association or institution, the National Committee shall satisfy itself that,—

(*i*) the association or institution is—

(*a*) constituted as a public charitable trust; or

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98. Substituted by the IT (Fourth Amdt.) Rules, 1993, w.e.f. 5-3-1993. Prior to its substitution, sub-rule (3), as inserted by the IT (First Amdt.) Rules, 1992, w.e.f. 2-1-1992, read as under :
"(3) One of the members of the National Committee shall be appointed as Chairman by the Central Government. In the event of vacancy of the office of Chairman for any reason and until a new Chairman is appointed, any other member may be elected by the National Committee to fill the vacancy. If, for any meeting, the Chairman is absent, the members present for the meeting may elect one amongst themselves to preside over the day's sitting."

(*b*) registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(*c*) registered under section 25[99] of the Companies Act, 1956 (1 of 1956);

(*ii*) persons managing the affairs of the association or institution are persons of proven integrity;

(*iii*) the activities of the association or institution are open to citizens of India without any distinction of religion, race, caste, sex, place of birth or any of them and are not expressed to be for the benefit of any individual or community;

(*iv*) the association or institution maintains regular accounts of its receipts and expenditure; and

(*v*) the instrument under which the association or institution is constituted does not or the rules or regulations governing the association or institution do not contain any provision for the transfer or application, at any time, of the whole or any part of the income or assets of the association or institution for any purpose other than a charitable purpose.

Guidelines for recommending projects or schemes.

11K. In making recommendations to the Central Government with regard to any project or scheme for being notified in the Official Gazette as an eligible project or scheme, the National Committee shall satisfy itself that,—

(*i*) the project or scheme relates to the provisions of one or more of the following :—

(*a*) construction and maintenance of drinking water projects in rural areas and in urban slums including installation of pump-sets, digging of wells, tube-wells and laying of pipes for supply of drinking water;

(*b*) construction of dwelling units for the economically weaker sections;

(*c*) construction of school buildings primarily for children belonging to the economically weaker sections of the society;

(*d*) establishment and running of non-conventional and renewable source of energy systems;

(*e*) construction and maintenance of bridges, public highways and other roads;

(*f*) any other programme for uplift of the rural poor or the urban slum dwellers, as the National Committee may consider fit for support;

[1][(*g*) promotion of sports;]

[2][(*h*) pollution control;]

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99. Now section 8 of the Companies Act, 2013, *see* **Appendix.**

1. Inserted by the IT (Seventh Amdt.) Rules, 1993, w.e.f. 16-4-1993.

2. Inserted by the IT (Eighth Amdt.) Rules, 1994, w.e.f. 12-8-1994.

[3][(*i*) establishment and running of educational institutions in rural areas, exclusively for women and children upto 12 years of age;

(*j*) establishment and running of hospitals and medical facilities in rural areas, exclusively for women and children upto 12 years of age;

(*k*) establishment and running of creches and schools for the children of workers employed in factories or at building sites;

(*l*) encouraging the production of bacteria induced fertilisers;

(*m*) any programme that promotes road safety, prevention of accidents and traffic awareness;]

[4][(*n*) construction of hostel accommodation for women or handicapped individuals or individuals who are of the age of sixty-five years or more;]

[5][(*o*) establishment and running of institutions for vocational education and training in rural areas or towns which consist of population of less than five lakhs;]

[6][(*p*) establishment and running of institutions imparting education in the field of engineering and medicine in rural areas or towns which consist of population of less than 5 lakhs;]

[7][(*q*) plantation of softwood on degraded non-forest land;

(*r*) any programme of conservation of natural resources or of afforestation;]

[8][(*s*) relief and rehabilitation of handicapped individuals;]

(*ii*) the benefit of the project or scheme shall flow to the public in general or to individuals belonging to the economically weaker sections of the society;

(*iii*) the applicant has the necessary expertise, personnel and other facilities for efficient implementation of the project or scheme;

(*iv*) the applicant shall maintain separate accounts in respect of the eligible project or scheme.

Application for approval of an association or institution or for recommendation of a project or scheme by the National Committee.

11L. (1) An application for approval of an association or institution or for recommendation of a project or scheme by the National Committee for the purposes of section 35AC may be made to the Secretary to the National Committee for Promotion of Social and Economic Welfare, Department of Revenue, Government of India, North Block, New Delhi - 110 001.

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3. Inserted by the IT (Tenth Amdt.) Rules, 1998, w.e.f. 30-7-1998.
4. Inserted by the IT (Seventh Amdt.) Rules, 1999, w.e.f. 14-5-1999.
5. Inserted by the IT (Second Amdt.) Rules, 2000, w.e.f. 6-4-2000.
6. Inserted by the IT (Fourth Amdt.) Rules, 2001, w.e.f. 4-5-2001.
7. Inserted by the IT (Fifth Amdt.) Rules, 2002, w.e.f. 1-4-2002.
8. Inserted by the IT (Sixth Amdt.) Rules, 2002, w.e.f. 7-5-2002.

(2) The application should be submitted in 2 sets, written either in English or Hindi, and should be accompanied with details about the name, address and status of applicant, the district/ward/circle where assessed/registered, permanent account number, audited balance sheet and profit and loss account or income and expenditure account for the latest year for which these are available and two preceding years.

(3) The application for approval of an association or institution should contain the following particulars and be accompanied with relevant documents :—

(*i*) Name and address of the association or institution;

(*ii*) How constituted (whether as a trust, society, etc.) supported by relevant documents like trust deed, rules and regulations, memorandum of association, etc., and registration certificate, if any;

(*iii*) Names and addresses of the persons managing the affairs of the association or institution, including those who had, at any time, during the three years preceding the date of application, managed the affairs of the association or institution;

(*iv*) If the association or the institution is notified by the Central Government for the purposes of sub-clause (*iv*) or (*v*) of clause (*23C*) of section 10 of the Income-tax Act, 1961 (43 of 1961), or is approved for the purposes of section 80G, the particulars of the approval granted;

[(*v*) Brief particulars of the activities of the association or institution during three years preceding the date of application :

Provided that when an association or institution has been in existence for a period of less than 3 years, in that case, that association or institution may furnish particulars of its activities for the period of its existence;]

(*vi*) Such other information as the association or institution may like to place before the National Committee.

(4) The application for recommendation of a project or scheme should contain the following particulars and be accompanied with relevant documents,—

(*i*) Title of project or scheme;

(*ii*) Date of commencement;

(*iii*) Duration and the likely date of completion;

(*iv*) Estimated cost of the project or scheme duly supported by a copy of the resolution of the Managing Committee of the association, institution or the local authority or, as the case may be, the Board of Directors of the company;

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9. Substituted by the IT (Fourth Amdt.) Rules, 1993, w.e.f. 5-3-1993. Prior to its substitution, clause (*v*), as inserted by the IT (First Amdt.) Rules, 1992, w.e.f. 2-1-1992, read as under :

"(*v*) Brief particulars of the activities of the association or institution during three years preceding the date of application;"

(v) Categories or classes of persons who are likely to be benefited from the project or scheme;

(vi) Affirmation that no benefit from the project or scheme, other than remuneration or honorarium for whole time or part-time work done or for reimbursement of actual expenses related to the project will accrue to the persons managing the affairs of the association or institution or to individuals not belonging to the economically weaker sections of the society;

(vii) Where the project or scheme is to be executed by a company, information about whether the project or scheme is such which the company is required to execute under any law for the time being in force or under agreement with employees or otherwise;

(viii) Such other particulars as the applicant may like to place before the National Committee.

Procedure before the National Committee.

11M. (1) All applications under rule 11L should be circulated by the Secretary to the National Committee to all the members of the Committee and will be considered by the National Committee at its sitting held at least seven days after the date on which the application is circulated. In exceptional cases, the Chairman may curtail the period of notice and may also direct consideration of the application by circulation only.

(2) The National Committee may call for such other information from the applicant as it deems necessary for taking a decision on the application and may also direct its Secretary to make or cause to be made enquiries on any matter relating to the application.

(3) The quorum for taking a decision on an application shall be at least five members, including Chairman. If a meeting is adjourned without taking a decision for lack of quorum, the [10][decision to adjourn the meeting] may be taken by the members present, even without the requisite quorum. [11][This decision would be conveyed to the absentee members along with notice about the date, time and place for re-holding the adjourned meeting.]

(4) Approval of an association or institution shall be for such period as the National Committee may decide, generally not exceeding a period of three years at a time. Subsequent approvals, if required, for a further period, can be granted only if the National Committee is satisfied about the activities of the association or institution during the preceding period of approval.

(5) The National Committee shall recommend ordinarily to the Central Government a project or scheme for being notified as an eligible project or scheme for an initial period up to three financial years. If the project or scheme is likely to extend

10. Substituted for "decision at the adjourned meeting" by the IT (Second Amdt.) Rules, 1995, w.e.f. 17-2-1995.

11. Inserted, *ibid.*

beyond three financial years, the National Committee shall make further recommendations for a period of three years at a time after being satisfied that the project or, as the case may be, scheme is being executed properly. For this purpose, the National Committee may monitor the execution of project or scheme and call for such information as it deems necessary.

[12][**Form of report by an approved association or institution under clause (*ii*) of sub-section (4) of section 35AC.**

11MA. (1) The report to be furnished by the approved association or institution under clause (*ii*) of sub-section (4) of section 35AC shall be in Form No. 58C.

(2) The report referred to in sub-rule (1) shall be furnished to the National Committee before the expiry of three months from the end of the financial year.

(3) The National Committee, after receipt of the report referred to in sub-rule (2) may, at any time, undertake to inspect or verify the information furnished by the association or institution.

Form of report by public sector company or local authority or association or institution, which is carrying out a notified eligible project or scheme, under clause (*ii*) of sub-section (5) of section 35AC.

11MAA. (1) The report to be furnished by a public sector company or local authority or an association or institution in respect of the eligible project or scheme, under clause (*ii*) of sub-section (5) of section 35AC shall be in Form No. 58D.

(2) The report referred to in sub-rule (1) shall be furnished to the National Committee before the expiry of three months from the end of the financial year.

(3) The National Committee, after receipt of the report referred to in sub-rule (2) may, at any time, undertake to inspect or verify the information furnished by the public sector company or local authority or association or institution.]

Other provisions.

11N. (1) The members of the National Committee shall not be entitled to any remuneration.

[13][(2) The members and Chairman of the National Committee shall be entitled to—

(*i*) Sitting fee of Rs. [14][6000] per day for attending a meeting of the National Committee or any Subordinate Committee set up by the Chairman of the

12. Inserted by the IT (Fifteenth Amdt.) Rules, 2005, w.e.f. 17-6-2005.

13. Substituted for the following by the IT (Second Amdt.) Rules, 1995, w.e.f. 17-2-1995 :
"(2) The members may be paid sitting fee up to Rs. 250 for each meeting of the National Committee attended by a member. In addition, they shall be entitled to reimbursement of actual cost of travel by air, rail or road as well as actual cost of boarding and local transport subject to the limits provided by the Central Government in respect of such expenditure by members of High Level Committee."

14. Substituted for "3000" by the IT (Twenty-third Amdt.) Rules, 2017, w.e.f. 5-10-2017. Earlier, "3000" was substituted for "250" by the IT (Twelfth Amdt.) Rules, 2009, w.e.f. 2-9-2009.

National Committee. However, sitting fee would not be payable where applications are considered by circulation or when a member is on tour.

(*ii*) Reimbursement of actual expenditure incurred by way of travel by rail, road or air, for attending any meeting of the National Committee or its Subordinate Committee. The entitlement of air travel would be restricted to the amount charged by Indian Airlines for its economy class for the members and to the amount charged for the executive class of the Indian Airlines for the Chairman. Members including Chairman may travel by any class on train. Members and Chairman would also be entitled to the reimbursement of [15][air-conditioned] taxi fare for reaching the venue of the meeting from their place of stay and for going back to the place of stay after the meeting.

(*iii*) [16][***]

15. Inserted by the IT (Twelfth Amdt.) Rules, 2009, w.e.f. 2-9-2009.
16. Omitted, *ibid.* Prior to its omission, clause (*iii*) read as under :
"(*iii*) Daily allowance for out-station members would be admissible in accordance with the following Table :

TABLE

(A)	(B)	(C)
City or Locality	*Stay in hotel and/or other establishment providing boarding and/or lodging at scheduled tariff* (*Rs.*)	*Does not stay in hotel or makes own arrangement* (*Rs.*)
I 'A' Class Cities/Specially Expensive Localities		
(*i*) *Cities*	265	106
(*1*) Ahmedabad U.A.		
(*2*) Bangalore U.A.		
(*3*) Calcutta U.A.		
(*4*) Delhi U.A.		
(*5*) Greater Bombay U.A.		
(*6*) Hyderabad U.A.		
(*7*) Kanpur U.A.		
(*8*) Madras U.A.		
(*9*) Pune U.A.		
(*ii*) *Localities*		
(*1*) Darjeeling District (except Siliguri Sub-division)		
(*2*) Darjeeling Town		
(*3*) NEFA areas beyond Inner Line		
(*4*) Naga Hills Tuensang area beyond the Inner Line		
(*5*) The following expensive/remote localities of Himachal Pradesh :—		
1. Lahaul and Spiti District;		
2. Kinnaur District;		

(Contd. on p. 1.205)

(Contd from p. 1.204)

(A)	(B)	(C)
3. Bharmour sub-division and Pangi Sub-division of Chamba District; 4. Pargana of Pandrah Bis; Cuter Seraj and Malana Panchayat area of Kulu District; 5. Chuhar Valley of Jogindernagar Tehsil of Mandi District; 6. Mangal Panchayat area of Solan District; 7. Dodra-kwar area of Rohru Tehsil; Parganas of Chhebis, Naubis, Barabis, Pandrahbis and Atharahbis; Sarahan and Gram Panchayats of Munish, Darkali and Kashapet of Rampur Tehsil of Shimla District; and 8. Chhota Bhangal and Bara Bhangal areas of Palampur Sub-division of Kangra District;		
(6) The following hill areas in Manipur which do not fall on the National Highway :— 1. Ukhrul 2. Churachandpur 3. Tamenglong 4. Jiribam 5. Mao Maram 6. Tengnampal		
II. 'B-1' Class Cities/Expensive Localities		
(i) *Cities*	225	85
(1) Coimbatore U.A. (2) Indore City U.A. (3) Jaipur U.A. (4) Lucknow U.A. (5) Madurai U.A. (6) Nagpur U.A. (7) Patna U.A. (8) Surat U.A.		
(ii) *Expensive Localities*		
(1) The following areas of Himachal Pradesh :— 1. Shimla; 2. Janjehli Block of Chachyot Tehsil of Mandi District; 3. Chaupal Tehsil of Shimla District; 4. Trans-Giri Tract of Sirmaur District; 5. Churah Tehsil, Salooni Tehsil, Kunr Panchayat and Belaj Pargana of Chamba Tehsil of Chamba District;		

(Contd. on p. 1.206)

[17][(*iv*) The out-station Chairman or Member may stay and claim reimbursement of rent in any State guest house or for single room in medium range ITDC hotel like Lodi Hotel, Qutab Hotel, Janpath Hotel, Ashoka Yatri Niwas or State Government run tourist hotels/hostels or residential accommodation provided by registered societies like India International Centre or India Habitat Centre. They would separately be entitled for reimbursement of food allowance at the rate of Rs. 500 per day.]

(*v*) Members and Chairman would have the same entitlement for travel, boarding and lodging in respect of tours undertaken in pursuance of a decision taken by the National Committee. However, sitting fee would not be admissible while on tour.

(*vi*) Sitting fee would not be admissible in case the National Committee takes decisions by circulation of the application alone. Actual postal charges and other expenses incurred by Members and Chairman for circulating the application would be reimbursed.

(*vii*) Reimbursement of any other expenditure with the approval of Secretary (Revenue) and the Financial Advisor, Department of Revenue, Ministry of Finance.]

(3) In granting approval to any project or scheme undertaken by a company, the National Committee shall satisfy itself that, where any expenditure is to be incurred in the acquisition or erection of a capital asset, the applicant-company has made adequate arrangements for divesting itself of the ownership of such asset without consideration in cash or otherwise immediately on completion of the eligible project, in the following manner :—

(*i*) in the case of drinking water projects, to individuals belonging to the economically weaker sections or to the local authority or the village panchayat, as the case may be;

(*ii*) in the case of dwelling units, to individuals belonging to the economically weaker sections, or to the local authority, village panchayat or an authority constituted under any law for the purpose of satisfying the need for housing accommodation or for the purpose of development or improvement of cities, towns and villages, as the National Committee may decide;

(*iii*) in the case of school buildings, to an educational institution existing solely for educational purposes and not for profit or to the State Government, local authority or a village panchayat;

(*Contd. from p. 1.205*)

(A)		(B)	(C)
	6. Manali-Ujhi area, Parvati and Lagg Valley and Banjar Block of Kulu District;		
	(2) The whole of Jammu and Kashmir;		
	(3) Andaman and Nicobar Islands;		
	(4) The entire territory of the Laccadive, Minicoy and Amindivi Islands		
(*iii*)	*Other cases*	205	78*

17. Substituted by the IT (Twelfth Amdt.) Rules, 2009, w.e.f. 2-9-2009.

(*iv*) in the case of non-conventional or renewable energy systems, to the district administration, local authority, village panchayat or to individuals belonging to the economically weaker sections, or such other statutory body as the National Committee may decide;

(*v*) in the case of bridges, public highways or other roads to the Central or the State Government, local authority or such other statutory body as the National Committee may decide;

(*vi*) in the case of equipment purchased for the purpose of eligible project or scheme, to the State Government, local authority or such other statutory body as the National Committee may decide having regard to the capacity of the authority concerned to gainfully utilise such equipments;

Note : Where before the completion of any eligible project/scheme, the company undertakes other eligible project(s)/scheme(s) and transfers the equipments to such subsequent project/scheme, the company will be required to divest itself of the ownership of the equipment only after the completion of the last eligible project/scheme.

(*vii*) in any other case, to such authority as the National Committee may decide.

(4) Immediately on completion of an eligible project/scheme, the company shall furnish details of the execution thereof to the National Committee. The National Committee shall satisfy itself that the project/scheme has been completed in accordance with the approval granted and that the company has divested itself of the assets in the manner prescribed by the National Committee. If the National Committee is not so satisfied, it may, after giving an opportunity of being heard on the proposed action, order withdrawal of the approval which shall then be deemed never to have been granted.]

[18][**Certificate of payment or expenditure in respect of eligible projects or schemes notified under section 35AC.**

11-O. (1) The certificate referred to in clause (*a*) of sub-section (2) of section 35AC shall be in Form No. 58A.

(2) The certificate referred to in clause (*b*) of sub-section (2) of section 35AC shall be in Form No. 58B.

(3) Every public sector company or a local authority or an association or institution, as the case may be, who issues a certificate referred to in sub-rule (1) or sub-rule (2) shall, in respect of the 31st March in each financial year, deliver or cause to be delivered to the Secretary, National Committee, an annual report indicating the progress of work relating to the project/scheme during the year as well as the following information (please specify the information in respect of each contributor separately) :—

(*i*) Names of the contributors and their addresses.

(*ii*) Permanent Account Number*/G.I.R. Number of the contributors.

(*iii*) Amount(s) of contribution.

(*iv*) The project/scheme for which contribution was made.

(*v*) Total amount of contribution received during the previous year.

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18. Inserted by the IT (Second Amdt.) Rules, 1993, w.e.f. 24-2-1993.

*Words "or Aadhaar Number" should be added after "Permanent account Number".

(vi) Total cost of the project approved by the National Committee (with date of Committee's approval).

(4) Every public sector company or a local authority or an association or institution, as the case may be, who issues a certificate referred to in sub-rule (1) or sub-rule (2) shall send an annual statement of donation received and the details of the project to the National Committee and to each contributor by 30th June, following the financial year in which the amounts are received.]

[19][**Guidelines for notification of affordable housing project as specified business under section 35AD.**

11-OA. (1) The form and manner in respect of notification of an affordable housing project as a specified business under sub-clause (*vii*) of clause (*c*) of sub-section (8) of section 35AD of the Act shall be as follows:—

(*a*) the applicant shall apply for notification of the project in Form No. 3CN to Member (IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi;

(*b*) if any defect is noticed in the application in Form No. 3CN or if any relevant document is not attached thereto, a deficiency letter may be served on the applicant;

(*c*) the applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended;

(*d*) if the applicant fails to remove the deficiency within the period so allowed, the Board, if satisfied, may pass an order treating the application as invalid;

(*e*) the Board may, before granting approval, call for such documents or information from the applicant as it may consider necessary and may call for further details or information from the applicant as well as from the income-tax authorities and other Departments or agencies, as it may deem fit;

(*f*) the Board may issue the notification to be published in the Official Gazette granting approval to the project or for reasons to be recorded in writing, reject the application;

(*g*) the Board may withdraw the approval if it is satisfied that the assessee has ceased its activities relating to the specified business or its activities are not genuine or are not being carried out in accordance with all or any of the conditions under this rule;

(*h*) no order treating the application as invalid or rejecting the application or withdrawing the approval or cancellation of the notification, shall be passed without giving an opportunity of being heard to the assessee;

(*i*) a copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant as well as the Assessing Officer and the Commissioner having jurisdiction over the assessee.

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19. Inserted by the IT (First Amdt.) Rules, 2012, w.e.f. 2-1-2012.

(2) A project shall be considered for notification if it fulfils all of the following conditions, namely: —

(*a*) the project shall have prior sanction of the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(*b*) the date of commencement of operations of the project shall be on or after the 1st day of April 2011;

(*c*) the project shall be on a plot of land which has a minimum area of one acre;

(*d*) at least thirty per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS category;

(*e*) at least sixty per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS and LIG categories;

(*f*) at least ninety per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS, LIG and MIG categories;

(*g*) the remaining ten per cent or less of the total allocable rentable area of the project may comprise of other residential or commercial units;

(*h*) the layout and specifications including design of the project to be developed and built shall be approved by the State or Union territory Government or its designated implementing agency;

(*i*) the project shall be completed within a period of five years from the end of the financial year in which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India.

(3) The assessee shall maintain separate books of account for the project with complete details of all capital expenditure incurred during the previous year on which it intends to claim the said deduction under section 35AD and shall file the relevant income-tax returns by the due date to the Income-tax Department to avail the tax benefit under section 35AD.

(4) A project notified under sub-clause (*vii*) of clause (*c*) of sub-section (8) of section 35AD shall continue to be governed by the provisions of this rule to the extent it is not in contravention with the provisions of the Act, as amended from time to time.

(5) In this rule,—

(*a*) "affordable housing units" shall be of the following categories:—

Category	*Rentable Area (in square metres)*	
	Specified cities	*Other cities*
Economically Weaker Section (EWS)	Up to 25	Up to 30
Lower Income Group (LIG)	Greater than 25 and up to 50	Greater than 30 and up to 60
Middle Income Group (MIG)	Greater than 50 and up to 70	Greater than 60 and up to 85

(*b*) "date of commencement of operations" means the date on which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(*c*) "housing unit" means an independent residential unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building - (*i*) directly accessible from an outer door or through an interior door in a shared hallway and not by walking through another household's living space and (*ii*) excluding any shared dining areas;

(*d*) "project" means an affordable housing project;

(*e*) "rentable area" means the carpet area at any floor level, including the carpet area of kitchen, pantry, store, lavatory, bathroom, fifty per cent of unglazed verandah and hundred per cent of glazed verandah, in accordance with the provisions of the Indian Standard - Method of Measurement of Plinth, Carpet and rentable Areas of Buildings, IS 3861 : 2002, formulated and published by the Bureau of Indian Standards;

(*f*) "specified cities" shall mean the following—

(*i*) Greater Mumbai urban agglomeration;

(*ii*) Delhi urban agglomeration;

(*iii*) Kolkata urban agglomeration;

(*iv*) Chennai urban agglomeration;

(*v*) Hyderabad urban agglomeration;

(*vi*) Bangalore urban agglomeration;

(*vii*) Ahmedabad urban agglomeration;

(*viii*) District of Faridabad;

(*ix*) District of Gurgaon;

(*x*) District of Gautam Budh Nagar;

(*xi*) District of Ghaziabad;

(*xii*) District of Gandhinagar; and

(*xiii*) City of Secunderabad;

Explanation.—For the purposes of this clause,—

the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the latest census;

(*g*) "total allocable rentable area" means the total rentable area of all the proposed housing units or non-housing units but excluding the areas earmarked for common facilities and services.]

[Guidelines for notification of a semiconductor wafer fabrication manufacturing unit as specified business under section 35AD.

11-OB. (1) The notification of a semiconductor wafer fabrication manufacturing unit as a specified business under sub-clause (*xiii*) of clause (*c*) of sub-section (8) of section 35AD of the Act shall be in accordance with the following procedure, namely:—

(*a*) the applicant shall apply for notification of the unit in Form No. 3CS to Member (Income-tax), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi;

(*b*) the Board shall serve a deficiency letter on the applicant if any defect is noticed in the application in Form No. 3CS or if any relevant document is not attached thereto;

(*c*) the applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended;

(*d*) if the applicant fails to remove the deficiency within the period so allowed, the Board, if satisfied, may pass an order treating the application as invalid;

(*e*) the Board may, call for such documents or information from the applicant as it may consider necessary and may call for further details or information from the applicant as well as from the income-tax authorities and other Departments or agencies, as it may deem fit;

(*f*) the Board may, after considering the application and the documents or the information referred to in clause (*e*), either issue the notification to be published in the Official Gazette granting approval to the unit or for reasons to be recorded in writing reject the application.

(*g*) The Board may, withdraw the approval if it is satisfied that:—

(*i*) the assessee has ceased its activities relating to the specified business; or

(*ii*) such activities are not genuine or are not being carried out in accordance with all or any of the conditions under section 35AD or under this rule; or

(*iii*) the approval granted by the competent authority on the recommendations of the Appraisal Committee under the Modified Special Incentive Package Scheme of the Department of Electronics and Information Technology has been withdrawn.

(*h*) no order treating the application as invalid or rejecting the application or withdrawing the approval or cancellation of the notification, shall be passed without giving an opportunity of being heard to the assessee;

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20. Inserted by the IT (Fourteenth Amdt.) Rules, 2014, w.e.f. 12-12-2014.

(d) a copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant and the Assessing Officer and the Commissioner having jurisdiction over the assessee.

(2) A unit shall be considered for notification if it fulfils all of the following conditions, namely:—

(a) the unit shall be exclusively for the manufacture of semiconductor wafer fabrications;

(b) the unit shall have prior approval of the competent authority on the recommendations of Appraisal Committee under the Modified Special Incentive Package Scheme notified by the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India;

(c) the date of commencement of operations of the unit shall be on or after the 1st day of April 2014;

(d) the unit may have one or more manufacturing facilities and all the facilities shall be located in India.

(3) The assessee shall maintain separate books of account for the unit with complete details of all capital expenditure incurred during the previous year on which it intends to claim the said deduction under section 35AD and shall file the relevant income-tax returns by the due date to the Income-tax Department to avail the tax benefit under section 35AD.

(4) A unit notified under sub-clause (*xiii*) of clause (*c*) of sub-section (8) of section 35AD shall continue to be governed by the provisions of this rule to the extent it is not in contravention with the provisions of the Act, as amended from time to time.

(5) In this rule and the Form,—

(*a*) "Competent authority" means the authority approving the unit under the Modified Special Incentive Package Scheme notified by the Government of India, Ministry of Communications and Information Technology, Department of Electronics and Information Technology;

(*b*) "date of commencement of operations" means the date on which the commercial production of the unit commences;

(*c*) "semiconductor wafer fabrications" means integrated circuits which are covered in the National Industrial Classification, 2008 under Division 26; Group 261; Class 2610; Sub-class 26103;

(*d*) "Unit" means a manufacturing facility for semiconductor wafer fabrications.]

[21][*G.—Tonnage tax scheme for shipping companies*

Application for exercising or renewing the option for tonnage tax scheme.

11P. An application under sub-section (1) of section 115VP for exercising an option for the tonnage tax scheme or under sub-section (1) of section 115VR for renewing the option for the tonnage tax scheme, as the case may be, shall be made in Form No. 65 and shall be verified in the manner provided therein.]

[22][**Computation of deemed tonnage.**

11Q. (1) For the purpose of the *Explanation* to sub-section (4) of section 115VG, deemed tonnage in respect of an arrangement of purchase of slots and slot charter shall be computed (illustrative formula given in Note 3 appearing after the corresponding Form No. 66) on the following basis :

2.5 TEU = 1 Net Tonnage (1 NT)

where TEU is Twenty foot Equivalent Unit (Container of this size)

(2) Computation of deemed tonnage (illustrative formula given in Note 4 appearing after the corresponding Form No. 66) in respect of an arrangement of sharing of break-bulk vessel shall be made on the following basis :

(*i*) in case where cargo is restricted by volume :

19 cubic meter (cbm) = 1 net tonnage (1 NT); and

(*ii*) in case where cargo is restricted by weight

14 metric tons = 1 net tonnage (1 NT)

Incidental activities for purposes of relevant shipping income.

11R. The incidental activities (details given in Note 5 appearing after the corresponding Form No. 66) referred to in sub-section (5) of section 115V-I shall be the following, namely :—

(*i*) maritime consultancy charges;

(*ii*) income from loading or unloading of cargo;

(*iii*) ship management fees or remuneration received for managed vessels; and

(*iv*) maritime education or recruitment fees.

Computation of average of net tonnage for charter-in of tonnage.

11S. The limit for charter-in of tonnage of the qualifying ships referred to in section 115VV (to be worked out according to the illustration explained in Note 6 appearing after the corresponding Form No. 66) during any previous year shall be computed by dividing the total number of chartered-in ton days by the total number of ton days operated by the company.

Form of report of an accountant under clause (*if*) of section 115VW.

11T. The report of audit of accounts of a qualified company which is required to be furnished under clause (*ii*) of section 115VW shall be in Form No. 66.]

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21. Inserted by the IT (Eleventh Amdt.) Rules, 2004, w.e.f. 29-9-2004.
22. Inserted by the IT (Eighth Amdt.) Rules, 2005, w.e.f. 1-4-2005.

[23][*H.—Determination of fair market value of the property other than immovable property*

Meaning of expressions used in determination of fair market value.

11U. For the purposes of this rule and rule 11UA,—

[24][(*a*) [25][***]

(*b*) "balance sheet", in relation to any company, means,—

(*i*) for the purposes of sub-rule (2) of rule 11UA, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956)[26] and where the balance sheet on the valuation date is not drawn up, the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and

[27][(*ii*) in any other case,—

(*A*) in relation to an Indian company, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and

(*B*) in relation to a company, not being an Indian company, the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;]]

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23. Inserted by the IT (Second Amdt.) Rules, 2010, w.r.e.f. 1-10-2009.
24. Substituted by the IT (Fifteenth Amdt.) Rules, 2012, w.e.f. 29-11-2012. Prior to their substitution, clauses (*a*) and (*b*) read as under :
    '(*a*) "accountant" shall have the same meaning as assigned in the *Explanation* to section 288 of the Act;
    (*b*) "balance sheet", in relation to any company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date;'
25. Omitted by the IT (Sixth Amdt.) Rules, 2018, w.e.f. 24-5-2018. Prior to its omission, clause (*a*) read as under :
    '(*a*) "accountant",—
    (*i*) for the purposes of sub-rule (2) of rule 11UA, means a fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) who is not appointed by the company as an auditor under section 44AB of the Act or under section 224 of the Companies Act, 1956 (1 of 1956); and
    (*ii*) in any other case, shall have the same meaning as assigned to it in the *Explanation* below sub-section (2) of section 288 of the Act;'
26. Now sections 139 and 142 of the Companies Act, 2013.
27. Substituted by the IT (Ninth Amdt.) Rules, 2018, w.e.f. 1-4-2019 and shall apply in relation to assessment year 2019-20 and subsequent years. Prior to its substitution, sub-clause (*ii*) read as under :
    "(*ii*) in any other case, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed under section 224 of the Companies Act, 1956 (1 of 1956);"

(*c*) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*d*) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(*e*) "recognized stock exchange" shall have the same meaning as assigned to it in clause (*f*) of section 2[28] of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*f*) "registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws;

(*g*) "registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth-tax Act, 1957 (27 of 1957) read with rule 8A of the Wealth-tax Rules, 1957;

(*h*) "securities" shall have the same meaning as assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)[28];

(*i*) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;

[29][(*j*) "valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.]

Determination of fair market value.

11UA. [30][(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(*a*) valuation of jewellery,—

(*i*) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;

(*ii*) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;

(*iii*) in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

(*b*) valuation of archaeological collections, drawings, paintings, sculptures or any work of art,—

(*i*) the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;

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28. For text of section 2(*f*) and 2(*h*) of Securities Contracts (Regulation) Act, 1956, *see* **Appendix.**

29. Substituted by the IT (Fifteenth Amdt.) Rules, 2012, w.e.f. 29-11-2012. Prior to its substitution, clause (*j*) read as under :

'(*j*) "valuation date" means the date on which the respective property is received by the assessee.'

30. Renumbered as sub-rule (1) by the IT (Fifteenth Amdt.) Rules, 2012, w.e.f. 29-11-2012.

(*ii*) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;

(*iii*) in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

(*c*) valuation of shares and securities,—

(*a*) the fair market value of quoted shares and securities shall be determined in the following manner, namely,—

(*i*) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(*ii*) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—

(*a*) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(*b*) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

[31][(*b*) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

the fair market value of unquoted equity shares = (A + B + C + D − L) × (PV)/(PE), where,

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31. Substituted by the IT (Twentieth Amdt.) Rules, 2017, w.e.f. 1-4-2018 and shall apply in relation to assessment year 2018-19 and subsequent years. Prior to its substitution, sub-clause (*b*), as substituted by the IT (Fifteenth Amdt.) Rules, 2012, w.e.f. 29-11-2012, read as under :

"(*b*) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

$$\text{the fair market value of unquoted equity shares} = \frac{(A-L)}{(PE)} \times (PV),$$

where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

(*i*) the paid-up capital in respect of equity shares;

(Contd. on p. 1.217)

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance sheet as reduced by,—

(*i*) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(*ii*) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(*i*) the paid-up capital in respect of equity shares;

(*ii*) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(*iii*) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(*iv*) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of

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(Contd. from p. 1.216)

(*ii*) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(*iii*) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(*iv*) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(*v*) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(*vi*) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid-up equity share capital as shown in the balance-sheet;

PV = the paid-up value of such equity shares;"

the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(*v*) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(*vi*) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = the paid-up value of such equity shares;

PE = total amount of paid-up equity share capital as shown in the balance sheet;]

(*c*) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.]

[32][(2)[33] Notwithstanding anything contained in sub-clause (*b*) of clause (*c*) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (*i*) of clause (*a*) of *Explanation* to clause (*viib*) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (*a*) or clause (*b*), at the option of the assessee, namely:—

(*a*) the fair market value of unquoted equity shares $= \frac{(A-L)}{(PE)} \times (PV)$,

where,

A = book value of the assets in the balance sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(*i*) the paid-up capital in respect of equity shares;

(*ii*) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

32. Inserted by the IT (Fifteenth Amdt.) Rules, 2012, w.e.f. 29-11-2012.

33. *See* also Letter F. No. 173/14/2018-ITA-I, dated 6-2-2018 (Determination of fair market value of unquoted equity shares of 'Start up' Companies); GSR 127(E), dated 19-2-2019 (Definition of 'Start ups'); S.O. 1131(E), dated 5-3-2019 (Exemption from application of section 56(2)(*viib*) in case of Start Ups); Circular No. 22/2019, dated 30-8-2019; Circular No. 16/2019, dated 7-8-2019 and Letter F. No. 173/354/2019-ITA-I, dated 9-8-2019 (Assessment of 'Start-ups'). For details, *see* Taxmann's Master Guide to Income-tax Rules.

(*iii*) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(*iv*) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(*v*) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(*vi*) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE= total amount of paid-up equity share capital as shown in the balance sheet;

PV= the paid-up value of such equity shares; or

(*b*) the fair market value of the unquoted equity shares determined by a merchant banker [34][***] as per the Discounted Free Cash Flow method.]

[35][**Determination of Fair Market Value for share other than quoted share.**

11UAA. For the purposes of section 50CA, the fair market value of the share of a company other than a quoted share, shall be determined in the manner provided in sub-clause (*b*) or sub-clause (*c*), as the case may be, of clause (*c*) of sub-rule (1) of rule 11UA and for this purpose the reference to valuation date in the rule 11U and rule 11UA shall mean the date on which the capital asset, being share of a company other than a quoted share, referred to in section 50CA, is transferred.]

[36][**Determination of fair market value for inventory.**

11UAB. For the purposes of clause (*via*) of section 28 of the Act, the fair market value of the inventory,—

(*i*) being an immovable property, being land or building or both, shall be the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;

(*ii*) being jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA, shall

34. Words "or an accountant" omitted by the IT (Sixth Amdt.) Rules, 2018, w.e.f. 24-5-2018.

35. Inserted by the IT (Twentieth Amdt.) Rules, 2017, w.e.f. 1-4-2018 and shall apply in relation to assessment year 2018-19 and subsequent assessment years.

36. Inserted by the IT (Ninth Amdt.) Rules, 2018, w.e.f. 1-4-2019 and shall apply in relation to assessment year 2019-20 and subsequent years.

be the value determined in the manner provided in sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 11UA shall be the date on which the inventory is converted into, or treated, as a capital asset;

(*iii*) being the property, other than those specified in clause (*i*) and clause (*ii*), the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.]

[37][Prescribed class of persons for the purpose of clause (*XI*) of the proviso to clause (*x*) of sub-section (2) of section 56.

11UAC. *The provisions of clause* (x) *of sub-section (2) of section 56 shall not apply to,—*

(1) any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazette, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

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37. Substituted by the IT (Fourteenth Amdt.) Rules, 2020, w.r.e.f. **1-4-2020** and shall be applicable for assessment year 2020-21and subsequent assessment years. Prior to its substitution, rule 11UAC, as inserted by the IT (Thirteenth Amdt.) Rules, 2019, w.e.f. 1-4-2020 and later on amended by the IT (Sixth Amdt.) Rules, 2020, w.e.f. 1-4-2020, read as under :

'11UAC. *Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) of section 56.*—The provisions of clause (*x*) of sub-section (2) of section 56 shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazette, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

Explanation.—For the purposes of this rule,—

(*a*) "resident" means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;

(*b*) "unauthorised colony" shall have the same meaning as assigned to it in clause (*b*) of section 2 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 (45 of 2019).'

Explanation.—*For the purposes of this sub-rule,—*

(a) *"resident" means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;*

(b) *"unauthorised colony" shall have the same meaning as assigned to it in clause (b) of section 2 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 (45 of 2019)*[37a]*;*

(2) any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder, where,—

(i) *the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and*

(ii) *share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.*

Explanation.—*For the purposes of this sub-rule,—*

(a) *a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;*

(b) *"Tribunal" shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013 (18 of 2013);*

(3) any movable property, being equity shares, of the reconstructed bank, received by the investor or the investor bank, as the case may be, where the said share has been allotted by the reconstructed bank under the scheme at a price specified in sub-paragraph (3) of paragraph 3 of the Scheme.

Explanation.—*For the purposes of this sub-rule,—*

(a) *"investor" shall have the same meaning as assigned to it in sub-clause (b) of clause (1) of paragraph 2 of the Scheme;*

37a. For definitions of "unauthorised colony"", *see* **Appendix**.
For text of Notification, *see* **Appendix**.

(b) *"investor bank" shall have the same meaning as assigned to it in sub-clause (e) of clause (1) of paragraph 2 of the Scheme;*

(c) *"reconstructed bank" shall have the same meaning as assigned to it in sub-clause (d) of clause (1) of paragraph 2 of the Scheme;*

(d) *"Scheme" means Yes Bank Limited Reconstruction Scheme, 2020.*]

[37b][**Prescribed class of persons for the purpose of section 50CA.**

11UAD. *The provisions of section 50CA of the Act shall not apply to transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary by an assessee, where,—*

(i) *the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and*

(ii) *share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.*

Explanation.—*For the purposes of this sub-rule,—*

(a) *a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;*

(b) *"Tribunal" shall have the same meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013.*]

[38][*I.—Determination of value of assets and apportionment of income in certain cases.*

Fair market value of assets in certain cases.

11UB. (1) The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as "foreign company or entity"), for the purposes of clause (*i*) of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.

(2) Where the asset is a share of an Indian company listed on a recognised stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

37b. Inserted by the IT (Fifteenth Amdt.) Rules, 2020, w.r.e.f. **1-4-2020** and shall be applicable for assessment year 2020-21and subsequent assessment years.

38. Inserted by the IT (Nineteenth Amdt.) Rules, 2016, w.e.f. 28-6-2016. For clarifications on Indirect Transfer provisions, *see* Circular No. 28/2017, dated 7-11-2017. For details, *see* Taxmann's Master Guide to Income-tax Rules.

Provided that where the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following formula, namely :—

Fair market value = (A+B)/C

Where:

A = the market capitalisation of the company on the basis of observable price of its shares quoted on the recognised stock exchange;

B = the book value of liabilities of the company as on the specified date;

C = the total number of outstanding shares:

Provided further that where, on the specified date, the share is listed on more than one recognised stock exchange, the observable price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

(3) Where the asset is a share of an Indian company not listed on a recognised stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by the liability, if any, considered in such determination.

(4) Where the asset is an interest in a partnership firm or an association of persons, its fair market value shall be determined in the following manner, namely:—

(*i*) the value on the specified date of such firm or association of persons, shall be determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology as increased by the liability, if any, considered in such determination;

(*ii*) the portion of the value computed in clause (*i*) as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the value shall be allocated among the partners or members in accordance with the agreement of partnership firm or association of persons for distribution of assets in the event of dissolution of the firm or association, or, in the absence of any such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the fair market value of the interest of that partner or member in the firm or the association of persons, as the case may be.

(5) The fair market value of the asset other than those referred to in sub-rules (2), (3) and (4) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.

(6) The fair market value of all the assets of a foreign company or an entity shall be determined in the following manner, namely:—

(*i*) where the transfer of share of, or interest in, the foreign company or entity is between the persons who are not connected persons, the fair market value of all the assets owned by the foreign company or the entity as on the specified date, for the purpose of such transfer, shall be determined in accordance with the following formula, namely:—

Fair market value of all assets = A+B

Where:

A = Market capitalisation of the foreign company or entity computed on the basis of the full value of consideration for transfer of the share or interest;

B = book value of the liabilities of the company or the entity as on the specified date as certified by a merchant banker or an accountant;

(*ii*) in any other case, if, —

(*a*) the share of the foreign company or entity is listed on a stock exchange on the specified date, the fair market value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely:—

Fair market value of all the assets = A+B

Where:

A = Market capitalisation of the foreign company or entity computed on the basis of the observable price of the share on the stock exchange where the share of the foreign company or the entity is listed;

B = book value of the liabilities of the company or the entity as on the specified date:

Provided that where, as on the specified date, the share is listed on more than one stock exchange, the observable price in the aforesaid formula shall be in respect of the stock exchange which records the highest volume of trading in the share during the period considered for determining the price;

(*b*) the share in the foreign company or entity is not listed on a stock exchange on the specified date, the value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely :—

Fair market value of all the assets = A+B

Where:

A = fair market value of the foreign company or the entity as on the specified date as determined by a merchant banker or an accountant as per the internationally accepted valuation methodology;

B = value of liabilities of the company or the entity if any, considered for the determination of fair market value in A.

(7) Where fair market value has been determined on the basis of any interim balance sheet referred to in the first proviso to clause (*ix*) of the *Explanation*, then the fair market value shall be appropriately modified after finalisation of the relevant financial statement in accordance with the applicable laws and all the provisions of this rule and rules 11UC and 114DB shall apply accordingly.

(8) For determining the fair market value of any asset located in India, being a share of an Indian company or interest in a partnership firm or association of persons, all the assets and business operations of the said company or partnership firm or association of persons shall be taken into account irrespective of whether the assets or business operations are located in India or outside.

(9) The rate of exchange for the calculation in foreign currency, of the value of assets located in India and expressed in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.

Explanation.—For the purposes of this rule and rule 11UC,—

(*i*) "accountant" means an accountant referred to in the *Explanation* to sub-section (2) of section 288 and for the purposes of sub-rule (6) includes any valuer recognised for undertaking similar valuation by the Government of the country where the foreign company or the entity is registered or incorporated or any of its agencies, who fulfils the following conditions, namely :—

(*a*) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,—

(*i*) the entity or its affiliates has presence in more than two countries; and

(*ii*) the annual receipt of the entity in the year preceding the year in which valuation is undertaken exceeds ten crore rupees;

(*b*) if he is pursuing the profession of accountancy individually or is a valuer then,—

(*i*) his annual receipt in the year preceding the year in which valuation is undertaken, from the exercise of profession, exceeds one crore rupees; and

(*ii*) he has professional experience of not less than ten years.

(*ii*) "connected person" shall have the meaning as assigned to it in clause (*4*) of section 102;

(*iii*) "right of management or control" shall include the right to appoint majority of the directors or to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(*iv*) "telegraphic transfer buying rate" shall have the meaning as assigned to it in the *Explanation* to rule 26;

(*v*) "observable price" in respect of a share quoted on a stock exchange shall be the higher of the following :—

(*a*) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the six months period preceding the specified date; or

(*b*) the average of the weekly high and low of the closing price of the shares quoted on the said stock exchange during the two weeks preceding the specified date;

(*vi*) "book value of the liabilities" means the value of liabilities as shown in the balance-sheet of the company or the entity as the case may be, excluding the paid-up capital in respect of equity shares or members' interest and the general reserves and surplus and security premium related to the paid-up capital.

(*vii*) "specified date" shall have the meaning as assigned to it in clause (*d*) of *Explanation 6* to clause (*i*) of sub-section (1) of section 9;

(*viii*) the terms "merchant banker" and "recognised stock exchange" shall have the meaning as assigned to them in rule 11U;

(*ix*) "balance sheet",—

(*a*) in relation to an Indian company, means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and

(*b*) in any other case, means the balance-sheet of the company or the entity (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date and submitted to the relevant authority outside India under the laws in force of the country in which the foreign company or the entity is registered or incorporated:

Provided that where the balance-sheet as on the specified date is not drawn up, pending finalisation of accounts, as mentioned in clauses (*a*) and (*b*), the balance sheet shall mean an interim balance-sheet drawn up as on the specified date and approved by the board of directors of the company or an equivalent body in case of any other entity:

Provided further that where the specified date is the date referred to in sub-clause (*ii*) of clause (*d*) of *Explanation 6* to clause (*i*) of sub-section (1) of section 9, the balance sheet means the balance sheet as drawn up on the specified date and certified by an accountant.

Determination of income attributable to assets in India.

11UC. (1) The income from transfer outside India of a share of, or interest in, a company or an entity referred to in clause (*i*) of sub-section (1) of section 9, attributable to assets located in India, shall be determined in accordance with the following formula, namely:—

$$A \times \frac{B}{C}$$

Where:

A = Income from the transfer of the share of, or interest in, the company or the entity computed in accordance with the provisions of the Act, as if, such share or interest is located in India;

B = Fair Market Value of assets located in India as on the specified date, from which the share or interest referred to in A derives its value substantially, computed in accordance with rule 11UB;

C = Fair Market Value of all the assets of the company or the entity as on the specified date, computed in accordance with rule 11UB:

Provided that if the transferor of the share of, or interest in, the company or the entity fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets located in India shall be determined in such manner as the Assessing Officer may deem suitable.

(2) The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report in Form No. 3CT duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.]

PART III

ASSESSMENT PROCEDURE

[39][Return of income and return of fringe benefits*.

12. (1) The return of income required to be furnished under sub-section (1) or sub-section (3) or sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) [40][or sub-section (4E)] [41][or sub-section (4F)] of section 139 or clause (*i*) of sub-section (1) of section 142 or sub-section (1) of section 148 or section 153A [42][***] relating to the assessment year commencing [43][on the 1st day of April, [44][*2020*]] shall,—

[45][(*a*) in the case of a person being [46][an individual who is a resident other than not ordinarily resident and] where the total income includes income chargeable to income-tax, under the head,—

*Words "and return of fringe benefits" should be omitted.

39. Substituted by the IT (Fourth Amdt.) Rules, 2007, w.e.f. 14-5-2007. Prior to its substitution, rule 12, as amended by the IT (Seventh Amdt.) Rules, 2006, w.e.f. 24-7-2006, IT (Eleventh Amdt.) Rules, 2006, w.e.f. 19-10-2006, IT (Fifth Amdt.) Rules, 2006, w.e.f. 1-6-2006, IT (Fifth Amdt.) Rules, 2004, w.e.f. 1-4-2004, IT (Sixth Amdt.) Rules, 2003, w.e.f. 14-5-2003, IT (First Amdt.) Rules, 2003, w.e.f. 28-1-2003 [as corrected by Notification No. SO 258(E), dated 5-3-2003], IT (Thirteenth Amdt.) Rules, 2002, w.e.f. 24-6-2002, IT (Tenth Amdt.) Rules, 2001, w.e.f. 2-7-2001, IT (Thirteenth Amdt.) Rules, 1998, w.e.f. 9-9-1998, IT (Fourth Amdt.) Rules, 1998, w.e.f. 1-4-1998, IT (Eighth Amdt.) Rules, 1997, w.e.f. 27-6-1997 [as corrected by Notification No. SO 870(E), dated 15-12-1997], IT (Sixteenth Amdt.) Rules, 1995, w.e.f. 23-8-1995, IT (Fourth Amdt.) Rules, 1995, w.e.f. 1-6-1995, IT (Third Amdt.) Rules, 1994, w.e.f. 1-6-1994, IT (Eighth Amdt.) Rules, 1991, w.r.e.f. 1-4-1989, IT (Amdt.) Rules, 1981, w.e.f. 1-4-1981, IT (Second Amdt.) Rules, 1979, w.e.f. 1-4-1979, IT (Fifth Amdt.) Rules, 1976, w.e.f.

(Contd. on p. 1.228)