

## CHAPTER III

## DIRECT TAXES

*Income-tax*

- Amendment of section 2. **3.** In section 2 of the Income-tax Act,—
- (a) in clause (24), in sub-clause (xii), for the word, brackets and figures “clause (vii)”, the word, brackets, figure and letter “clause (va)” shall be substituted; 5
- (b) in clause (42A), in *Explanation 1*, in clause (i), after sub-clause (g), the following sub-clauses shall be inserted with effect from the 1st day of April, 2004, namely:—
- “(h) in the case of a capital asset, being trading or clearing rights of a recognised stock exchange in India acquired by a person pursuant to demutualisation or corporatisation of the recognised stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation; 10
- (ha) in the case of a capital asset, being equity share or shares in a company allotted pursuant to demutualisation or corporatisation of a recognised stock exchange in India as referred to in clause (xiii) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation;” 15
- Amendment of section 6. **4.** In section 6 of the Income-tax Act, for clause (6), the following clause shall be substituted with effect from the 1st day of April, 2004, namely:—
- ‘(6) A person is said to be “not ordinarily resident” in India in any previous year if such person is— 20
- (a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or
- (b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.’ 25
- Amendment of section 9. **5.** In section 9 of the Income-tax Act, in sub-section (1), in clause (i), the existing *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanations* shall be inserted with effect from the 1st day of April, 2004, namely:— 30
- ‘*Explanation 2.*—For the removal of doubts, it is hereby declared that “business connection” shall include any business activity carried out through a person who, acting on behalf of the non-resident,—
- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or 35
- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident: 40
- Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business.
- Explanation 3.*—For the purposes of the foregoing proviso, a broker, general commission agent or any other agent (hereafter in this section referred to as the commission agent) shall be deemed to have an independent status where such commission agent does not work mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control as that non-resident.’ 45
- Amendment of section 10. **6.** In section 10 of the Income-tax Act,— 50
- (a) in clause (6C), for the words “by way of fees”, the words “by way of royalty or fees” shall be substituted with effect from the 1st day of April, 2004;
- (b) in clause (10C), with effect from the 1st day of April, 2004,—
- (i) in the opening portion, for the words “any amount received by an employee of”, the words “any amount received or receivable by an employee of” shall be substituted; 55
- (ii) for the words “at the time of his voluntary retirement”, the words “on his voluntary retirement” shall be substituted;

(c) for clause (10D), the following shall be substituted with effect from the 1st day of April, 2004, namely:—

'(10D) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

5 (a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or

(b) any sum received under a Keyman insurance policy; or

10 (c) any sum received under an insurance policy in respect of which the premium paid in any of the years during the term of the policy exceeds twenty per cent. of the actual capital sum assured:

Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the *Explanation* to sub-section (2A) of section 88.

15 *Explanation.*—For the purposes of this clause, “Keyman insurance policy” means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person;’;

20 (d) in clause (15), in sub-clause (iv), in item (g), for the words “a loan agreement approved by the Central Government”, the words, figures and letters “a loan agreement approved by the Central Government before the 1st day of June, 2003” shall be substituted with effect from the 1st day of April, 2004;

25 (e) in clause (23BBD), for the words, figures and letters “three previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2004”, the words, figures and letters “seven previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2008” shall be substituted with effect from the 1st day of April, 2004;

30 (f) in clause (23D), in the opening portion, for the words “any income of”, the words, figures and letter “subject to the provisions of Chapter XII-E, any income of” shall be substituted with effect from the 1st day of April, 2004;

(g) in clause (23EB), for the words “Credit Guarantee Fund Trust for Small Scale Industries”, the words “Credit Guarantee Fund Trust for Small Industries” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2002;

35 (h) in clause (23FA), for the word “dividends”, the words, figures and letter “dividends, other than dividends referred to in section 115-O” shall be substituted with effect from the 1st day of April, 2004;

(i) in clause (23G),—

(i) for the word “dividends”, the words, figures and letter “dividends, other than dividends referred to in section 115-O” shall be substituted with effect from the 1st day of April, 2004;

40 (ii) after the words, brackets, figures and letters “housing project referred to in sub-section (10) of section 80-IB”, the words “or a hotel project or a hospital project” shall be inserted with effect from the 1st day of April, 2004;

(iii) in *Explanation 1*,—

45 (A) in clause (a), for the portion beginning with the words “in the business of” and ending with the words “any infrastructure facility”, the words “in the business referred to in this clause” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2002;

50 (B) in clause (b), for the portion beginning with the words “in the business of” and ending with the words “any infrastructure facility”, the words “in the business referred to in this clause” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2002;

(C) after clause (f), the following clauses shall be inserted with effect from the 1st day of April, 2004, namely:—

55 (g) “hotel project” means a project for constructing a hotel of not less than three-star category as classified by the Central Government;

(h) "hospital project" means a project for constructing a hospital with at least one hundred beds for patients.;

(j) after clause (26BB), the following shall be inserted with effect from the 1st day of April, 2004, namely:—

'(26BBB) any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India. 5

*Explanation.*—For the purposes of this clause, "ex-serviceman" means a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, and in the case of a deceased or incapacitated ex-serviceman includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependant upon such ex-serviceman immediately before his death or incapacitation.;" 10 15

(k) after clause (32), the following clause shall be inserted, namely:—

"(33) any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 and where the transfer of such asset takes place on or after the 1st day of April, 2002.;" 58 of 2002.

(l) after clause (33) as so inserted, the following clauses shall be inserted with effect from the 1st day of April, 2004, namely:— 20

'(34) any income by way of dividends referred to in section 115-O;

(35) any income by way of,—

(a) income received in respect of the units of a Mutual Fund specified under clause (23D); or

(b) income received in respect of units from the Administrator of the specified undertaking; 25  
or

(c) income received in respect of units from the specified company:

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be. 30

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

(a) "Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; 58 of 2002.

(b) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; 35 58 of 2002.

(36) any income arising from the transfer of a long-term capital asset, being equity share in a company listed in a recognised stock exchange in India and acquired on or after the 1st day of March, 2003 but before the 1st day of March, 2004.'

Amendment of section 10A.

7. In section 10A of the Income-tax Act,—

(a) in sub-section (4), for the word, brackets and figure "sub-section (1)", the words, brackets, figures and letter "sub-sections (1) and (1A)" shall be substituted; 40

(b) in sub-section (5), for the word, brackets and figure "sub-section (1)", the words "this section" shall be substituted;

(c) after sub-section (7), the following sub-section shall be inserted with effect from the 1st day of April, 2004, namely:— 45

"(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and 50

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.;"

(d) sub-sections (9) and (9A) shall be omitted with effect from the 1st day of April, 2004;

(e) *Explanation 1* shall be omitted with effect from the 1st day of April, 2004;

(f) after *Explanation 3*, the following *Explanation* shall be inserted at the end with effect from the 1st day of April, 2004, namely:—

5        '*Explanation 4.*—For the purposes of this section, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.'

8. In section 10B of the Income-tax Act, with effect from the 1st day of April, 2004,—

Amendment of section 10B.

(a) after sub-section (7), the following sub-section shall be inserted, namely:—

10        “(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

15        (b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.”;

(b) sub-sections (9) and (9A) shall be omitted;

(c) *Explanation 1* shall be omitted;

(d) after *Explanation 3*, the following *Explanation* shall be inserted at the end, namely:—

20        '*Explanation 4.*—For the purposes of this section, “manufacture or produce” shall include the cutting and polishing of precious and semi-precious stones.'

9. In section 10C of the Income-tax Act, after sub-section (6) and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2004, namely:—

Amendment of section 10C.

25        “Provided that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2004 and subsequent years.”.

10. In section 11 of the Income-tax Act, in sub-section (3A), after the proviso, the following proviso shall be inserted, namely:—

Amendment of section 11.

30        “Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.”.

11. In section 16 of the Income-tax Act, for clause (j), the following clause shall be substituted with effect from the 1st day of April, 2004, namely:—

Amendment of section 16.

35        “(j) in the case of an assessee whose income from salary, before allowing a deduction under this clause,—

(A) does not exceed five lakh rupees, a deduction of a sum equal to forty per cent. of the salary or thirty thousand rupees, whichever is less;

(B) exceeds five lakh rupees, a deduction of a sum of twenty thousand rupees;”.

40        12. In section 30 of the Income-tax Act, after clause (c), the following *Explanation* shall be inserted with effect from the 1st day of April, 2004, namely:—

Amendment of section 30.

“*Explanation.*—For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub-clause (i), and the amount paid on account of current repairs referred to in sub-clause (ii), of clause (a), shall not include any expenditure in the nature of capital expenditure.”.

45        13. In section 31 of the Income-tax Act, after clause (ii), the following *Explanation* shall be inserted with effect from the 1st day of April, 2004, namely:—

Amendment of section 31.

“*Explanation.*—For the removal of doubts, it is hereby declared that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.”.

14. In section 33AB of the Income-tax Act, with effect from the 1st day of April, 2004,—

Amendment of section 33AB.

50        (a) in the marginal heading, after the word “account”, the words “and coffee development account” shall be inserted;

(b) for the words “Tea Deposit Account”, wherever they occur, the words “Deposit Account” shall be substituted;

(c) in sub-section (1),—

(i) in the opening portion,—

(A) for the words “growing and manufacturing tea”, the words “growing and manufacturing tea or coffee” shall be substituted;

(B) for the words “furnishing the return of his income”, the words “the due date of furnishing the return of his income” shall be substituted; 5

(ii) in clause (a), for the words “approved in this behalf by the Tea Board”, the words “approved in this behalf by the Tea Board or the Coffee Board” shall be substituted;

(iii) in clause (b), for the portion beginning with the words “deposited any amount” and ending with the words “approval of the Central Government,”, the following shall be substituted, namely:— 10

“deposited any amount in an account (hereafter in this section referred to as the Deposit Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board or the Coffee Board, as the case may be (hereafter in this section referred to as the deposit scheme), with the previous approval of the Central Government.”; 15

(d) in sub-section (4), in the opening portion, after the words, brackets and figure “no deduction under sub-section (1) shall be allowed”, the words “to the assessee carrying on business of growing and manufacturing tea in India” shall be inserted;

(e) after sub-section (4), the following sub-section shall be inserted, namely:—

‘(4A) Notwithstanding anything contained in sub-section (3), where any amount standing to the credit of the assessee, carrying on business of growing and manufacturing coffee in India in the special account or in the Deposit Account, is released during any previous year by the National Bank or withdrawn by the assessee from the Deposit Account, and such amount is utilised for the purchase of— 20

(a) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house; 25

(b) any office appliances (not being computers);

(c) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any one previous year; 30

(d) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule,

the whole of such amount so utilised shall be deemed to be the profits and gains of business of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.’; 35

(f) in the *Explanation* occurring at the end, for clause (a), the following clauses shall be substituted, namely:—

‘(a) “Coffee Board” means the Coffee Board constituted under section 4 of the Coffee Act, 1942; 40 7 of 1942.

(aa) “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981.’. 61 of 1981.

Amendment of section 36.

**15.** In section 36 of the Income-tax Act, in sub-section (1),—

(a) in clause (iii) and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2004, namely:— 45

“Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.”; 50

(b) in clause (vii), in sub-clause (a), after the second proviso and before the *Explanation*, the following provisos shall be inserted with effect from the 1st day of April, 2004, namely:—

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:

5 Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession".;

(c) in clause (x), for the words, brackets, figures and letter "any fund specified under clause (23E) of section 10", the words "any Exchange Risk Administration Fund set up by public financial institutions, either jointly or separately" shall be substituted;

(d) after the *Explanation* below clause (xi), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2002, namely:—

15 "(xii) any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorised by the Act under which such corporation or body corporate was constituted or established."

16. In section 40 of the Income-tax Act, in clause (a), with effect from the 1st day of April, 2004,— Amendment of section 40.

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

20 '(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax has not been deducted or, after deduction, has not been paid under Chapter XVII-B:

25 Provided that where in respect of any such sum, tax has been deducted under Chapter XVII-B and paid in any subsequent year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been deducted and paid:

30 Provided further that where in respect of any such sum, tax has been deducted under Chapter XVII-B and paid before the expiry of the time prescribed under sub-section (1) of section 200 in the subsequent year, such sum shall be allowed as a deduction in computing the income of the previous year in which the liability to pay such sum was incurred.

*Explanation.*—For the purposes of this sub-clause,—

(A) "royalty" shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;

35 (B) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;';

(b) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

'(iii) any payment which is chargeable under the head "Salaries", if it is payable—

(A) outside India; or

40 (B) to a non-resident,

and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;'

17. In section 43 of the Income-tax Act, with effect from the 1st day of April, 2004,—

Amendment of section 43.

(a) in clause (3), after the words "but does not include tea bushes or livestock", the words "or buildings or furniture and fittings" shall be inserted;

45 (b) in clause (6), in *Explanation 2B*, the words "as appearing in the books of account" shall be omitted.

18. In section 43B of the Income-tax Act, with effect from the 1st day of April, 2004,—

Amendment of section 43B.

(a) in clause (e),—

(i) for the words "term loan", the words "loan or advances" shall be substituted;

50 (ii) for the words "such loan", the words "such loan or advances" shall be substituted;

(b) in the first proviso, the words, brackets and letters “referred to in clause (a) or clause (c) or clause (d) or clause (e) or clause (f)” shall be omitted;

(c) the second proviso shall be omitted.

- Amendment of section 44AA. **19.** In section 44AA of the Income-tax Act, in sub-section (2), in clause (iii), after the word, figures and letters “section 44AF”, the words, figures and letters “or section 44BB or section 44BBB” shall be inserted with effect from the 1st day of April, 2004. 5
- Amendment of section 44AB. **20.** In section 44AB of the Income-tax Act, with effect from the 1st day of April, 2004,—
- (a) in clause (c), after the word, figures and letters “section 44AF”, the words, figures and letters “or section 44BB or section 44BBB” shall be inserted;
- (b) in the first proviso, for the words, figures and letters “section 44BB or section 44BBA or section 44BBB”, the word, figures and letters “section 44BBA” shall be substituted. 10
- Amendment of section 44AE. **21.** In section 44AE of the Income-tax Act, in sub-section (1), after the words “who owns not more than ten goods carriages”, the words “at any time during the previous year” shall be inserted with effect from the 1st day of April, 2004.
- Amendment of section 44BB. **22.** In section 44BB of the Income-tax Act, after sub-section (2) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of April, 2004, namely:— 15
- “(3) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.”. 20
- Amendment of section 44BBB. **23.** In section 44BBB of the Income-tax Act, with effect from the 1st day of April, 2004,—
- (a) the existing section shall be numbered as sub-section (1) thereof and in sub-section (1) as so numbered, the words “and financed under any international aid programme” shall be omitted; 25
- (b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—
- “(2) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.”. 30
- Amendment of section 44D. **24.** In section 44D of the Income-tax Act, in clause (b), after the words, figures and letters “after the 31st day of March, 1976”, the words, figures and letters “but before the 1st day of April, 2003” shall be inserted with effect from the 1st day of April, 2004. 35
- Insertion of new section 44DA. **25.** After section 44D of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2004, namely:—
- ‘44DA. (1) The income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by a non-resident (not being a company) or a foreign company with Government or the Indian concern after the 31st day of March, 2003, where such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be, shall be computed under the head “Profits and gains of business or profession” in accordance with the provisions of this Act: 40
- 45
- Provided that no deduction shall be allowed,—
- (i) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or 50
- (ii) in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.
- (2) Every non-resident (not being a company) or a foreign company shall keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA 55

and get his accounts audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income, the report of such audit duly signed and verified by such accountant.

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

5 (a) “fees for technical services” shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;

(b) “royalty” shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;

(c) “permanent establishment” shall have the same meaning as in clause (iiia) of section 92F.

10 **26.** In section 45 of the Income-tax Act, in sub-section (5), after clause (b) and before the *Explanation*, the following clause shall be inserted with effect from the 1st day of April, 2004, namely:— Amendment of section 45.

15 “(c) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (a) or, as the case may be, enhanced compensation or consideration referred to in clause (b), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration.”

**27.** In section 47 of the Income-tax Act, with effect from the 1st day of April, 2004,— Amendment of section 47.

20 (a) in clause (xiii), for the word “corporatisation”, wherever it occurs, the words “demutualisation or corporatisation” shall be substituted;

(b) after clause (xiii), the following clause shall be inserted, namely:—

25 “(xiiia) any transfer of a capital asset being a membership right held by a member of a recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;”

15 of 1992.

**28.** In section 55 of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2004,— Amendment of section 55.

(a) in clause (ab), for the word “corporatisation”, the words “demutualisation or corporatisation” shall be substituted;

30 (b) after clause (ab), the following proviso shall be inserted, namely:—

“Provided that the cost of a capital asset, being trading or clearing rights of the recognised stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualisation or corporatisation, shall be deemed to be *nil*.”

35 **29.** In section 57 of the Income-tax Act, in clause (i), for the words “in the case of dividends”, the words, figures and letter “in the case of dividends, other than dividends referred to in section 115-O” shall be substituted with effect from the 1st day of April, 2004. Amendment of section 57.

**30.** In section 72A of the Income-tax Act, with effect from the 1st day of April, 2004,— Amendment of section 72A.

(a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

40 “(1) Where there has been an amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company or an amalgamation of a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 with a specified bank, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

10 of 1949.

45 (2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless—

50 (a) the amalgamating company—

(i) has been engaged in the business for at least three years during which the accumulated loss has occurred or the unabsorbed depreciation has accumulated;

(ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;



(b) the amalgamated company—

(i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;

(ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation; 5

(iii) fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.”;

(b) in sub-section (7), after clause (b), the following clause shall be inserted, namely:— 10

‘(c) “specified bank” means the State Bank of India constituted under the State Bank of India Act, 1955 or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.’. 15 23 of 1955. 38 of 1959. 5 of 1970. 40 of 1980..

Substitution of new section for section 80DD. 31. For section 80DD of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2004, namely:—

Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability. ‘80DD. (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year,—

(a) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or 20

(b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability, 25

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of fifty thousand rupees from his gross total income in respect of the previous year:

Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words “fifty thousand rupees”, the words “seventy-five thousand rupees” had been substituted. 30

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

(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made; 35

(b) the assessee nominates either the dependant, being a person with disability, or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability. 40

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year. 45

(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed:

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income. 50

*Explanation.*—For the purposes of this section,— 55

(a) “Administrator” means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; 58 of 2002.