CHAPTER - IV

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CHAPTER FOUR
STATUTORY PROVISIONS AND THEIR ANALYSIS

4.1 INTRODUCTION:

The Income-tax Act, 1961, contains specific provisions in respect of the assessment of the companies. In Section-I of the present Chapter, these provisions are being reproduced verbatim and their analysis and interpretation is being offered in Section-II.

SECTION-I

4.2 STATUTORY PROVISIONS:

1. SECTION 79
CARRY FORWARD AND SET OFF OF LOSSES
IN THE CASE OF CERTAIN COMPANIES

[1]79. Notwithstanding anything contained in this Chapter (Chapter-VI, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless -

(a) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons

who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred

[2][***]

[3][Provided that nothing contained in this section shall apply to a case where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift.]

[4](b) [Omitted by the Finance Act, 1988, w.e.f. 1.4.1989.]

2. SECTION 115J [5][Chapter XII-B
SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

115J (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company, [6][(other than a company engaged in the business of generation or distribution of electricity)], the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April 1988 [7][but before the 1st day of April, 1991] (hereinafter in this section referred to as the relevant previous year), is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

[8][(1A) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).]

Explanation: For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year [9][prepared under sub-section (1A)], as increased by -

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves [10][(other than the reserves specified in section 80HHD [11][or sub-section (1) of section 33AC]), by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter-III [12][applies; or]

[10][(g) the amount withdrawn from the reserve account under section 80HHD, where it has been utilized for any purpose other than those referred to in sub-section (4) of that section; or

(h) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilized within the period specified in sub-section (4) of that section;]

[11][(ha) the amount deemed to be the profits under sub-section (3) of section 33AC;]

[13][if any amount referred to in clauses (a) to (f) is debited or, as the case may be, the amount referred to in clauses (g) and (h) is not credited] to the profit and loss account, and as reduced by -

(i) the amount withdrawn from reserves [10][(other than the reserves specified in section 80HHD)] or provisions, if any such amount is credited to the [14][profit and loss account;

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1988, shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or]

(ii) the amount of income to which any of the provisions of Chapter-III applies, if any such amount is credited

to the profit and loss account; or

[15][(iii) the amounts [as arrived at after increasing the net profit by the amount referred to in clauses (a) to (f) and reducing the net profit by the amounts referred to in clauses (i) and (ii)] attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be; or

[16][(iv)] the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (b) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J.]

3. SECTION 194:
DIVIDENDS

[17]194. [18]The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, [19][who is resident in India] of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2, deduct from the amount of such dividend, income-tax [20][***] at the rates in force:

[21][Provided that no such deduction shall be made in the case of a shareholder being an individual, [22][***] of a company in which the public are substantially interested, if -

(a) the dividend is paid by such company by an account payee cheque; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceeed [23][two thousand five hundred rupees]; [24]Provided [25][further] that where in the case of any shareholder, not being a company, the [26][Assessing] Officer gives a certificate in writing in the prescribed manner[27] that to the best of his belief the total income [28][***] of

the shareholder will be less than the minimum liable to income-tax, the person responsible for paying any dividend to the shareholder shall so long as the certificate is in force pay the dividend without any deduction.

CHAPTER VI-A : DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS:

[29][Deduction in respect of donations to certain funds, charitable institutions, etc.

[30]80G. [31][(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, -

[32][(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in [33][sub-clause (iiia) [34][or in sub-clause (iiia) [35][or in sub-clause (iiiab)] or in sub-clause (vii) of clause (a) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty percent of the balance of such aggregate; and]

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).]

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) any sums paid by the assessee in the previous year as donations to:-

(i) The National Defence Fund set up by the Central Government; or

(ii) the Jawaharlal Nehru Memorial Fund referred to in t4he Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or

(iii) the Prime Minister's Drought Relief Fund; or

[36][(iiia) the Prime Minister's National Relief Fund; or]

[37][(iiiaa) the Prime Minister's Armenia Earthquake Relief Fund; or]

35[(iiiab) the Africa (Public Contributions - India) Fund; or]

[38][(iiib) the National Children's Fund; or]

[39][(iiic) the Indira Gandhi Memorial Trust, the deed of declaratio in respect whereof was registered at New Delhi on the 21st day of February, 1985; or]

[40][(iiid) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or]

(iiie) [Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. These clauses were insertedd by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date]

(iv) any other fund or any institution to which this section applies; or

(v) the Government or any local authority, to be utilized for any charitable purpose [41][other than the purpose of promoting family planning; or]

[42][(vi) any authority referred to in clause (20A) of section 10; or

[43](vii) the Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilized for the purpose of promoting family planning;]

[44](b) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurudwara, church or other place as notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

(3) No deduction shall be allowed under sub-section (1) if the aggregate of the sums referred to in sub-section (2) is less than two hundred and fifty rupees.

[45](4) Where the aggregate of the sums referred to in sub-clauses (iv),(v),(vi) and (vii) of clause (a) and in clause (b) of sub-section (2) exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of his Chapter), then the amount in excess of ten per cent of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under sub-section (1)].

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely :-

[46][(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (22) [47][or clause (22A)] [48][or clause (23)] [49][or clause (23AA)] [50][or clause (23C)] of section 10;

[51][Provided that where an institution or fund derives any income, being profits ad gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if -

(a) the institution or fund maintains separate books of accounts in respect of such business;

(b) the donations made to the institutions or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

(ii) The instrument under which the institution or fund

is constituted does not, or the rules governing the institution or fud do not, contain any provision for the transfer or appplication at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure; and

(v) the institution or fund is either constituted as a public charitable trust or is 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 under section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law, [52][or is an institution approved by the Central Government for the purposes of clause (23) of section 10] or is an institution financed wholly or in part by the Government or a local authority;

[53][(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance

with the rules made in this behalf;

Provided that any approval shall have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the approval.]

[54][(5A) Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in sub-section (2), the sum in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

Explanation 1: An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (iii) of sub-section (5).

[55][Explanation 2: For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely:-

[56][(i) that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, [57][section 12 or section 12A];

(ii) that, under clause (c) of sub-section (1) of section 13,

the exemption under section 11 [58][or section 12] is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (h) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern referred to in the said clause (h) does not exceed five per cent of the capital of that concern.]

Explantion 3: In this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.

[59][Explanation 4: For the purposes of this section, an association approved by the Central Government for the purposes of clause (23) of section 10 shall also be deemed to be an institution, and every association or institution approved by the Central Government for the purposes of the said clause shall be deemed to be an institution established in India for a charitable purpose.]

[60][Explanation 5: For the removal of doubts, it is hereby declared that no deduction shall be allowed under this section in respect of any donation unless such donation is of a sum of money.]

[61](6) [***]

[62][Deduction in respect of certain donations for scientific research or rural development.

80GGA. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the

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provisions of this section, the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely -

(a) any sum paid by the assessee in the previous year to a scientific research association which has as its object the undertaking of scientific research or to a University, college or other institution to be used for scientific research:

Provided that such association, University, college or institution is for the time being approved for the purposes for clause (ii) of sub-section (1) of section 35;

[63][(aa) any sum paid by the assessee in the previous year to a University, college or other institution to be used for research in social science or statistical research:

Provided that such University, college or institution is for the time being approved for the purposes of clause (iii) of sub-section (1) of section 35;]

(b) any sum paid by the assessee in the previous year -

(i) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved for the purposes of section 35CCA; or

(ii) to an association or institution which has as its object the training of persons for implementing

programmes of rural development;

[64][Provided that the assessee furnishes the certificate referred to in sub-section (2) or, as the case may be, sub-section (2A) of section 35CA from such association or institution;]

[65][(bb) any sum paid by the assessee in the previous year to a public sector company or a local authority or to an association or institution approved by the National Committee, for carrying out any eligible project or scheme;

Provided that the assessee furnishes the certificate referred to in clause (a) of sub-section (2) of section 35AC from such public sector company or local authority, or, as the case may be, association or institution.

Explanation: For the purposes of this clause, the expressions "National Committee" and "eligible project or scheme" shall have the meanirgs respectively assigned to them in the Explanatior to section 35AC;]

[66][(c) any sum paid by the assessee in the previous year to an association or institution, which has its object the undertaking of any programme of conservation of natural resources [67][or of afforestation], to be used for carrying out any programme of conservation of natural resources [67][or of affforstation] approved for the purposes of section 35CCB;]

[67][(cc) any sum paid by the assessee in the previous year to

such fund for afforestation as is notified by the Central Government under clause (b) of sub-section (1) of section 35CCB;]

[68][(d) any sum paid by the assessee in the previous year to a rural development fund set up and notified by the Central Government for the purposes of clause (c) of sub-section (1) of section 35CCA].

(3) Notwithstanding anything contained in sub-section (1), no deduction under this section shall be allowed in the case of an assessee whose gross total income includes income which is chargeable under the head 'Profits and gains of business or profession'.

(4) Where a deduction under this section is claimed and allowed for any assessment year in respect of any payments of the nature specified in sub-section (2), deduction shall not be allowed in respect of such payments under any other provision of this Act for the same or any other assessment year.]]

[69][Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.

[70]80HH (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains

of an amount equal to twenty per cent thereof.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it has begun or begins to manufacture or produce articles after the 31st day of December, 1970 [71][but before the 1st day of April, 1990], in any backward area;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already iin existence in any backward area;

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area;

(iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

Explanation: Where any machinery or plant or any part thereof previously used for any purpose in any backward area is transferred to a new business in that area or in any other

backward area and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (iii) of this sub-section, the condition specified therein shall be deemed to have been fulfilled.

(3) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely:-

(i) the business of the hotel has started or starts functioning after the 31st day of December 1970 [72][but before the 1st day of April, 1990] in any backward area;

(ii) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence;

(iii) the hotel is for the time being approved for the purposes of this sub-section by the Central Government.

(4) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning;

Provided that, -

(i) in the case of an industrial undertaking which has begun to manufacture or produce articles, and

(ii) in the case of the business of a hotel which has started

functioning,

after the 31st day of December, 1970, but before the 1st day of April, 1973, this sub-section shall have effect as if the reference to ten assessment years were a reference to ten assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1974.

[73]((5) Where the assessee is a person other than a company or a cooperative society, the deduction under sub-section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

(6) Where any goods held for the purposes of the business of the industrial undertaking or the hotel are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel does not correspond to the market value of such goods as on the date of the transfer, then, for the

purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date;

Provided that where, in the opinion of the [74][Assessing] Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel in the manner hereinbefore specified presents exceptional difficulties, the [74][Assessing] Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation: In this sub-section, "market value" in relation to any goods means the price that such goods would ordinarily fetch on sale in the open market.

(7) Where it appears to the [75][Assessing] Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel, the [75][Assessing] Officer shall, in computing the profits and gains of the industrial undertaking or the hotel for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been

derived therefrom.

(8) [76][***]

(9) In a case where the assessee is entitled also to the deduction under [77][section 80-I or] section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section.

[78][(9A) Where a deduction in relation to the profits and gains of a small-scale industrial undertaking to which section 80HHA applies is claimed and allowed under that section for any assessment year, deduction in relation to such profits and gains shall not be allowed under this section for the same or any other assessment year.]

(10) Nothing contained in this section shall apply in relation to any undertaking engaged in mining.

[79][(11) For the purposes of this section, "backward area" means such area as the Central Government may, having regard to the stage of development of that area, by notification[80] in the Official Gazette, specify in this behalf:

Provided that any notification under this sub-section may be issued so as to have retrospective effect to a date not earlier than the 1st day of April, 1983.]

[81][Deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas.

80HHA. (1) Where the gross total income of an assessee includes any profits and gains derived from a small scale industrial

undertaking to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

(2) This section applies to any small-scale industrial undertaking which fulfils all the following conditions, namely:-

(i) it begins to manufacture or produce articles after the 30th day of September, 1977 [82][but before the 1st day of April, 1990], in any rural area;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any small-scale industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

Explanation: Where in the case of a small-scale industrial

undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (iii) of this sub-section, the condition specified therein shall be deemed to have been fulfilled.

(3) The deduction specified in sub-section (1) shall be allowed in computing the total income [83][of each of the ten previous years beginning with the previous year in which the industrial undertaking] begins to manufacture or produce articles:

[84][Provided that such deduction shall not be allowed in computing the total income of any of the ten previous years aforesaid in respect of which the industrial undertaking is not a small-scale industrial undertaking within the meaning of clause (b) of the Explanation below sub-section (8).]

[85](4) Where the assessee is a person, other than a company or a cooperative society, the deduction under sub-section (1) shall not be admissible unless the accounts of the small-scale industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

(5) The provisions of sub-sections (6) and (7) of section 80HH shall, so far as may be, apply in relation to the computation of the profits and gains of a small-scale industrial undertaking for the purposes of the deduction under this section as they apply in relation to the computation of the profits and gains of an industrial undertaking for the purposes of the deduction under that section.

(6) In a case where the assessee is entitled also to the deduction under [86][section 80-I or] section 80J in relation to the profits and gains of a small-scale industrial undertaking to which this section applies, effect shall first be given to the provisions of this section.

(7) Where a deduction in relation to the profits and gains of a small-scale industrial undertaking to which section 80HH applies is claimed and allowed under that section for any assessment year, deduction in relation to such profits and gains shall not be allowed under this section for the same or any other assessment year.

(8) Nothing contained in this section shall apply in relation to any small-scale industrial undertaking engaged in mining.

Explanation: For the purposes of this section -

[87][(a) "rural area" means any area other than -

(i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a

population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(ii) an area within such distance, not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the stage of development of such area (including the extent of, and sccpe for, urbanization of such area) and other relevant considerations specify in this behalf by notification in the Official Gazette;]

(b) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant (other than tocls, jigs, dies and moulds) installed, as on the last day of the previous year, for the purposes of [88][the business of the undertaking does not exceed, -

[89][(1) in a case where the previous year ends before the 1st day of August, 1980, ten lakh rupees;

(2) in a case where the previous year ends after the 31st day of July, 1980, but before the 18th day of March, 1985, twenty lakh rupees; and

(3) in a case where the previous year ends after the 17th day of March, 1985, thirtyfive lakh rupees,]

and for this purpose, the value of any machinery or plant shall be -

(i) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee; and

(ii) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.]

[90][Deduction in respect of profits and gains from projects outside India.

[91]80HHB. (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is resident in India includes any profits and gains derived from the business of -

(a) the execution of a foreign project undertaken by the assessee in pursuance of a contract entered into by him, or

(b) the execution of any work undertaken by him and forming part of a foreign project undertaken bby any other person in pursuance of a contract entered into by such other person.

with the Government of a foreign State or any statutory or other public authority or agency in a foreign State, or a foreign enterprise, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to [92][fifty] per cent thereof;

Provided that the consideration for the execution of such project or, as the case may be, of such work is payable in convertible foreign exchange.

(2) For the purpose of this section, -

(a) 'convertible foreign exchange' means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(b) 'foreign project' means a project for -

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

(ii) the assembly or installation of any machinery or plant outside India;

(iii) the execution of such other work (of whatever nature) as may be prescribed.

(3) The deduction under this section shall be allowed only if the following conditions are fulfilled, namely:-

[93](i) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the foreign project, or, as the case may be, of the work forming part of the foreign project undertaken by him and, where the assessee is a person other than an Indian company or a cooperative society, such accounts have been audited by an accountant as defined in the Explanation below sub-section (2) of

section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant;

(ii) an amount equal to [94](fifty) per cent of the profits and gains referred to in sub-section (1) is debited to the profit and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the 'Foreign Projects Reserve Account') to be utilized by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profits;

(iii) an amount equal to [94](fifty) per cent of the profits and gains referred to in sub-section (1) is brought by the assessee in convertible foreign exchange into India, in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, within a period of six months from the end of the previous year referred to in clause (ii) or, where the [95][Chief Commissioner or Commissioner] is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the [95][Chief Commissioner or Commissioner] may allow in this behalf:

Provided that where the amount credited by the assessee to the Foreign Projects Reserve Account in pursuance of clause (ii) or the amount brought into India by the assessee in pursuance of clause (iii) or each of the said amounts is less than [96][fifty] per cent of the profits and gains referred to iin sub-section (1), the deduction under that sub-section shall be limited to the amount so credited in pursuance of clause (ii) or the amount so brought into India in pursuance of clause (iii), whichever is less.

(4) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilizes the amount credited to the Foreign Projects Reserve Account for distribution by way of dividends or profits or for any other purpose which is not a purpose of the business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed, and the [97][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year 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 previous year in which the money was so utilized.

(5) Notwithstanding anything contained in any other provision of this Chapter under the heading "C - Deductions in respect of

certain incomes", no part of the consideration or of the income comprised in the consideration payable to the assessee for the execution of a foreign project referred to in clause (a) of sub-section (1) or of any work referred to in clause (b) of that sub-section shall qualify for deduction for any assessment year under any such other provision.]

[98][Deduction in respect of profits retained for export business.

[99]80HHC [100][(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the [101][profits] derived by the assessee from the export of such goods or merchandise;

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the [102][total profits delivered by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified

in the said certificate bears to the total export turnover of the assessee in respect of such trading goods].

(1A) Where the assessee, being a supporting manufacturer, has, during the previous year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub-section (1), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction of the [103][profits] derived by the assessee from the sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House.]

(2)(a) This section applies to all goods or merchandize, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are [104][(received in, or brought into, India)] by the assessee [105][(other than the supporting manufacturer)] in convertible foreign exchange [106][within a period of six months from the end of the previous year or, where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond hisi control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf.]

(b) This section does not apply to the following goods or

merchandise, namely:-

(i) mineral oil; and

(ii) minerals and ores [107][(other than processed minerals and ores specified in the Twelfth Schedule)].

[108][Explanation 1: The sale proceeds referred to in clause (a) shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Explanation 2: For the removal of doubts, it is hereby declared that where any goods or merchandize are transferred by an assessee to a brach, office, warehouse or any other establishment of the assessee situate outside India and such goods or merchandise are sold from such branch, office, warehouse or establishment, then, such transfer shall be deemed to be export out of India or such goods and merchandise ad the value of such goods or merchadise declared in the shipping bill or bill of export as referred to in sub-section (1) of section 50 of the Customs Act, 1962 (52 of 1962), shall, for the purposes of this section, be deemed to be the sale proceeds thereof.]

[109][(3) For the purposes of sub-section (1), -

(a) where the export out of India is of goods or merchandise manufactured [110][or processed] by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion

as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) where the export out of India is of goods or merchandise manufactured [110][or processed] by the assessee and of trading goods, the profits derived from such export shall, -

(i) in respect of the goods or merchadise manufactured [110][or processed] by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods:

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum

referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Explanation: For the purposes of this sub-section, -

(a) "adjusted export turnover" means the export turnover as reduced by the export turnover in respect of trading goods;

(b) "adjusted profits of the business" means the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3);

(c) "adjusted total turnover" means the total turnover of the business as reduced by the export turnover in respect of trading goods;

(d) "direct costs" means costs directly attributable to the trading goods exported out of India including the purchase price of such goods;

(e) "indirect costs" means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover;

(f) "trading goods" means goods which are not manufactured [111][or processed] by the assessee.]

[112][(3A) For the purposes of sub-section (1A), profits derived by a supporting manufacturer from the sale of goods or merchan-

dise shall be, -

(a) in a case where the business carried on by the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the profits of the business [113][***]

(b) in a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount which bears to the profits of the business [114][***] the same proportion as the turnover in respect of sale to the respective Export House or Trading House bears to the total turnover of the business carried on by the assessee.]

[115][(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form,[116] along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 certifying that the deduction has been correctly claimed [117][in accordance with the provisions of this section.]]

[118][(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting manufacturer furnishes in the prescribed form along with his return of income, -

[119](a) the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the [120][profits] of the supporting manufacturer in respect

of his sale of goods or merchandize to the Export House or Trading House; and

(b) a certificate from the Export House or Trading House containing such particulars as may be prescribed and verified in the manner prescribed [121] that in respect of the Export House or Trading House has not claimed the deduction under this section;

Provided that the certificate specified in clause (b) shall be duly certified by the auditor auditing the accounts of the Export House or Trading House under the provisions of this Act or under any other law.]

Explanation: For the purposes of this section, -

(a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

[122][(aa) "export out of India" shall not include any transaction by way of sale or otherwise, in a shop [123] emporium or any other establishment situate in India, not involving clearance at any customs station as defined in the Customs Act, 1962 (52 of 1962);]

(b) "export turnover" means the sale proceeds [124] received in, or brought into, India] by the assessee in convertible foreign exchange [125][in accordance with clause (a) of sub-section (2)] of any goods or merchandize to which this

section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandize beyond the [126]customs station as defined in the Customs Act, 1962 (52 of 1962);]

[127][(ba) "total turnover" shall not include freight or insurance attributable to the transport of the goods or merchandize beyond the customs station[126] as defined in the Customs Act, 1962 (52 of 1962):

Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28;]

[128][(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by -

(1) ninety per cent of any sum referred to in clause (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;]

[129][***]

[130][***]

[131][[132][(c) "Export House Certificate" or "Trading House Certifi-

cate" means a valid Export House Certificate or Trading House Certificate, as the case may be, issued by the Chief Controller of Imports and Exports, Government of India;

[132][(d) "supporting manufacturer" means a person being an Indian company or a person (other than a company) resident in India, [133][manufacturing (including processing) goods] or merchandize and selling such goods or merchandize to an Export House or a Trading House for the purposes of export.]

[134][Deduction in respect of earnings in convertible foreign exchange.

80HHD. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of a hotel or of a tour operator, approved by the prescribed authority[135] in this behalf or of a travel agent there shall, in accordance with and subject to the provisions of this section, be allowed, in computing of total income of the assessee, a deduction of a sum equal to the aggregate of -

(a) fifty per cent of the profits derived by him from services provided to foreign tourists; and

(b) so much of the amount out of the remaining profits referred to in clause (a) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilized for the purposes of the business of the assessee in the manner laid down in sub-section (4);

[136][Provided that a hotel or, as the case may be, a tour operator approved by the prescribed authority on or after the 30th day of November, 1989, and before the 1st day of October, 1991, shall be deemed to have been approved by the prescribed authority for the purposes of this section in relation to the assessment year commencing on the 1st day of April, 1989, or the 1st day of April, 1991, 1990 or, as the case may be, the 1st day of April, 1991 if the assessee was engaged in the business of such hotel or as such tour operator during the previous year relevant to any of the said assessment years.]

(2) This section applies only to services provided to foreign tourists the receipts in relation to which are received [137][in, or brought into, India by the assessee in convertible foreign exchange within a period of six months from the end of the previous year or, where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf].

[138][Explanation: For the purposes of this sub-section, any payment received by an assessee, engaged in the business of a hotel or of a tour operator or of a travel agent, in Indian currency obtained by conversion of foreign exchange brought into India through an authorized dealer, from a tour operator or, as the case may be, a travel agent on behalf

of a foreign tourist or group of foreign tourists, shall be deemed to have been received by the assessee in convertible foreign exchange if the person making payment furnishes to the assessee a certificate specified in sub-section (2A).

(2A) Every person making payment to an assessee referred to in Explanation to sub-section (2) out of Indian currency obtained by conversion of foreign exchange received from or on behalf of a foreign tourist or a group of foreign tourists shall furnish to that assessee a certificate in the prescribed form[139] indicating the amount received in foreign exchange, its conversion into Indian currency and such other particulars as may be prescribed.]

[140][(3) For the purposes of section of sub-section (1), profits derived from services provided to foreign tourists shall be the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession") the same proportion as the receipts specified in sub-section (2) bear to the total receipts of the business carried on by the assessee.]

(4) The amount credited to the reserve account under clause (b) of sub-section (1) shall be utilized by the assessee before the expiry of a period of five years next following the previous year in which the amount was credited for the following purposes, namely:-

(a) construction of new hotels approved by the prescribed authority in this behalf or expansion of facilities in

existing hotels already so approved;

(b) purchase of new cars and new coaches by tour operators already so approved or by travel agents;

(c) purchase of sports' equipment for mountaineering, trekking, golf, river-rafting and other sports in or on water;

(d) construction of conference or convention centres;

(e) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any of the activities referred to in clauses (a) to (e) would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

(5) Where any amount credited to the reserve account under clause (b) of sub-section (1), -

(a) has been utilized for any purpose other than those referred to in sub-section (4), the amount so utilized, or

(b) has not been utilized in the manner specified in sub-section (4), the amount not so utilized,

shall be deemed to be the profits, -

(i) in a case referred to in clause (a), in the year in which the amount was so utilized; or

(ii) in a case referred to in clause (b), in the year

immediately following the period of five years specified in the sub-section (4),

and shall be charged to tax accordingly.

(6) The deduction under sub-section (1) shall not be admissible unless the assessee furnished in the prescribed form[141] along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the [142][aggregate of the amount of convertible foreign exchange received by the assessee for services provided by him to foreign tourists and the payments received by him in Indian currency as referred to in the Explanation to sub-section (2).]

Explanation: For the purposes of this section, -

(a) "travel agent" means a travel agent or other person (not being an airline or a shipping company) who holds a valid licence granted by the Reserve Bank of India under section 32 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(b) "convertible foreign exchange" shall have the meaning assigned to it in clause (a) of the Explanation to section 80HHC;

(c) "services provided to foreign tourists" shall not include services by way of sale in any shop owned or managed by the person who carries on the business of a hotel or of a tour operator or of a travel agent;)

[143][(d) "authorised dealer", "foreign exchange" and "Indian currency" shall have the meanings respectively assigned to them in clauses (b), (h) and (k) of section (2) of the Foreign Exchange Regulation Act, 1973 (46 of 1973).]

[144][Deduction in respect of profits from export of computer software, etc.

80HHE. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of, -

(i) export out of India of computer software or its transmission from India to a place outside India by any means;

(ii) providing techical services outside India in connection with the development or production of computer software,

there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from such business;

Provided that no such deduction shall be allowed in relation to the assessment year commencing on the 1st day of April, 1944, or any subsequent assessment year.

(2) The deduction specified in sub-section (1) shall be allowed only if the consideration in respect of the computer software referred to in tha sub-section is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, where the Commissioner is satisfied (for

reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Commissioner may allow in this behalf.

Explanation: The said consideration shall be deemed to have been received in India where it is credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form[145] alongwith the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

Explanation: For the purposes of this section, -

(a) "convertible foreign exchange" shall have the meaning assigned to it in clause (a) of the Explanation to section 80HHC;

(b) "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme which is transmitted from India to a place outside India by any means;

(c) "export turnover" means the consideration in respect of computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to he delivery of the computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(d) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by, -

(1) ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;

(e) "total turnover" shall not include -

(i) any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28;

(ii) any frieght, telecommunication charges or insurance attributable to the delivery of the computer software outside India; and

(iii) expenses, if any, incurred in foreign exchage in providing the technical services outside India.]

[146][Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.

80-I. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel [147][or the business or repairs to ocean-going vessels or other powered craft] to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof;

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect [148][in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel] as if for the words "twenty per cent", the words "twenty five per cent" had been substituted.

[149][(1) Notwithstanding anything contained in sub-section (1), in relation to any profits and gains derived by an assessee from-

(i) an industrial undertaking which begins to manufacture or produce articles or things or to operate its cold storage plant or plants; or

(ii) a ship which is first brought into use; or

(iii) the business of a hotel which starts functioning.

on or after the 1st day of April, 1990 [150][but before the 1st day of April, 1991], there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction from succh profits and gains of an amount equal to twenty-five per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted.]

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage

plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate such plant or plants, at any time within the period of [151][ten] years next following the 31st day of March, 1981, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power:

Provided that the condition in clause (i) shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section:

Provided further that the condition in clause (iii) shall, in relation to a small-scale industrial undertaking, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1: For the purposes of clause (ii) of this sub-section, any machinery or plant which was used outside India by any person other than the assessee shall not be

regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2: Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so trasferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

Explanation 3: For the purposes of this sub-section, "small-scale industrial undertaking" shall have the same meaning as in clause (b) of the Explanation below sub-section (8) of section 80HHA.

(3) This section applies to any ship, where all the following conditions are fulfilled, namely:-

(i) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(ii) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(iii) it is brought into use by the Indian company at any time within the period of [152][ten] years next following the 1st day of April, 1981.

(4) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely:-

(i) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose;

(ii) the business of the hotel is owned and carried on by a company registered in India within a paid-up capital of not less than five hundred thousand rupees;

(iii) the hotel is for the time being approved for the purposes of this sub-section by the Central Government;

(iv) the business of the hotel starts functioning after the 31st day of March, 1981, but before the 1st day of April, [153][1991].

[154][(4A) This section applies to the business of repairs to

ocean-going vessels or other powered craft which fulfils all the following conditions, namely:-

(i) the business is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it is carried on by an Indian company and the work by way of repairs to ocean-going vessels or other powered craft has been commenced by such company after the 31st day of March, 1983, but before the 1st day of April, 1988; and

(iv) it is for the time being approved for the purposes of this sub-section by the Central Government.]

(5) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning [155][or the company commences work by way of repairs to ocean-going vessels or other powered crafts] (such assessment year being hereafter in this section referred to as the initial assessment year) and each of the seven assessment years immediately succeeding the initial assessment year:

Provided that in the case of an assessee, being a cooperative society, the provisions of this sub-section shall have effect

as if for the words "seven assessment years", the words "nine assessment years" had been substituted:

[156][Provided further that in the case of an assessee carrying on the business of repairs to ocean-going vessels or other powered craft, the provisions of this sub-section shall have effect as if for the words "seven assessment years", the words "four assessment years" had been substituted:]

[157][Provided also that in the case of -

(i) an industrial undertaking which begins to manufacture or produce articles or things or to operate its cold storage plant or plants; or

(ii) a ship which is first brought into use; or

(iii) the business of a hotel which starts functioning,

on or after the 1st day of April 1990 [158][but before the 1st day of April, 1991], provisions of this sub-section shall have effect as if for the words "seven assessment years", the words "nine assessment years" had been substituted.

Provided also that in the case of an assessee, being a cooperative society, deriving profits and gains from an industrial undertaking or a ship or a hotel referred to in the third proviso, the provisions of that proviso shall have effect as if for the words "nine assessment years", the words "eleven assessment years" had been substituted.]

(6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel [156][or the business of

repairs to ocean-going vessels or other powered craft] to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the hotel [156][or the business of repairs to ocean-going vessels or other powered craft] were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year upto and including the assessment year for which the determination is to be made.

(7) Where the assessee is a person other than a company or a cooperative society, the deduction under sub-section (1) from profits and gains derived from an industrial underaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form[159] duly signed and verified by such accountant.

(8) Where any goods held for the purposes of the business of the industrial undertaking or the hotel or the operation of the ship [160][or the business of repairs to ocean-going vessels or other powered craft] are transferred to any other business

carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of an industrial undertaking or the hotel or the operation of tthe ship [160][or the business of repairs to ocean-going vessels or other powered craft] and, in either case, the consideration, if any, for such transfer is recorded in the accounts of the business of the industrial undertaking or the hotel or the operation of the ship [160][or the business of repairs to ocean-going vessels or other powered craft] does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel or tne operation of the ship [160][or the business of repairs to ocean-going vessels or other powered craft] shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date;

Provided that where, in the opinion of the [162][Assessing] Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship [161][or the business of repairs to ocean-going vessels or other powered craft] in the manner hereinbefore specified presents exceptional difficulties, the [162][Assessing] Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation: In this sub-section, "market value", in relation to

any goods, means the price that such goods would ordinarily fetch on sale in the open market.

(9) Where it appears to the [162][Assessing] Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel or the operation of the ship [161][or the business of repairs to ocean-going vessels or other powered craft] to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel or the operation of the ship [161][or the business of repairs to ocean-going vessels or other powered craft], the [162][Assessing] Officer, shall, in computing the profits and gains of the industrial undertaking or the hotel or the ship [161][or the business of repairs to ocean-going vessels or other powered craft] for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(10) The Central Government may, after making such inquiry as it might think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notification].

[163][Deduction in respect of profits and gains from industrial undertakings, etc., in certain cases.

80-IA. (1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or a hotel or operation of a ship (such business being hereinafter referred to as the eligible business), to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6).

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence;

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh

or operates one or more cold storage plant or plants, in any part of India;

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking, apply as if the words "not being any article or thing specified in list in the Eleventh Schedule" had been omitted;

(iv) it begins to manufacture or produce articles or things or to operate such plant or plants, at any time during the period beginning on the 1st day of April, 1991, and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(v) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

Explanation 1: For the purposes of clause (ii) of this sub-section, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2: Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purpcses of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

(3) This section applies to any ship, where all the following conditions are fulfilled, namely:-

(i) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(ii) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(iii) it is brought into use by the Indian company at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995.

(4) This section applies to the business of any hotel, where conditions (i), (ii), (v) and either of the conditions (iii) or (iv), are fulfilled, namely:-

(i) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose;

(ii) the business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;

(iii) the business of the hotel, located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may having regard to the need for development of infrastructure for tourism in any place and other relevant considerations specify for the purpose of this clause, starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994;

(vi) the business of the hotel -

(1) located in any place, or

(2) located in a place other than a place referred to in clause (iii) of this sub-section,

starts functioning at any time during the period beginning on the 1st day of April, 1991, and ending on the 31st day of March, 1995;

(v) the hotel is for the time being approved by the prescribed authority.[164]

(5) The amount referred to in sub-section (1) shall be -

(i) in the case of an industrial undertaking, twentyfive per cent of the profits and gains derived from such industrial undertaking;

Provided that where the assessee is a company, the provisions of this clause shall have effect as if for the words "twentyfive per cent", the words "thirty per cent" had been substituted;

(ii) in the case of a hotel referred to in clause (iii) of sub-section (4), fifty per cent of the profits and gains derived from the business of such hotel;

Provided that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules made under this Act;

Provided further that the said hotel approved by the prescribed authority before the 31st day of March 1992, shall be deemed to have been approved by the prescribed authority for the purposes of this section in relation to the assessment year commencing on the 1st day of April, 1991;

(iii0 in the case of a hotel referred to in clause (iv) of sub-section (4) thirty per cent of the profits and gains derived from the business of such hotel;

(iv) in the case of a ship, thirty per cent of the profits

derived from such ship.

(6) The number of assessment years referred to in sub-section (1) shall, including the initial assessment year, be -

(i) twelve in the case of an assessee, being a cooperative society, deriving profits and gains from an industrial undertaking;

(ii) ten in the case of any other assessee deriving profits and gains from an industrial undertaking;

(iii) ten in the case of any other assessee deriving profits and gains, from a ship or the business of a hotel.

(7) Notwithstanding anything contained in any other provisions of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deducion under sub-section (5) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(8) Where the assessee is a person other than a company or a cooperative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment

year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form[164] duly signed and verified by such accountant.

(9) Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date; Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation: In this sub-section, "market value", in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to rise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notification.

(12) For the purposes of this sectio, -

(a) "hilly area" means any area located at a height of one thousand metres or more above the sea level;

(b) "industrial undertaking" shall have the meaning assigned to it in the Explanation to section 33B;

(c) "initial assessment year" means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning;

(d) "place of pilgrimage" means a place where any temple, mosque, gurudwara, church or other place of public worship of renown throughout any State or States is situated;

(e) "rural area" means any area other than -

(i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the preceding census of which relevant figures have been published before the first day of the previous year; or

(ii) an area within such distance not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the stage of development of such area (including the extent of, and scope for, urbanization of such area) and other relevant considerations specify in this behalf by notification in the Official Gazette;

(f) "small-scale industrial undertaking" means an industrial undertaking where the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds)

installed, as on the last day of the previous year, for the purposes of business of the undertaking does not exceed sixty lakh rupees and for this purpose the value of any machinery or plant shall be, -

(i) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee; and

(ii) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.]

[165][Deduction in respect of profits and gains from business of poultry farming.

80JJ. Where the gross total income of an assessee includes any profits and gains derived from business of poultry farming, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to thirty-three and one-third per cent thereof.]

[166][Deduction in respect of certain inter-corporate dividends.

80M. (1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to, -

(i) in the case of a scheduled bank or a public financial institution or a State financial corporation or a State

industrial investment corporation or a company registered under section 25 of the Companies Act, 1956 (1 of 1956), sixty percent of the income by way of dividends froM another domestic company;

(ii) in the case of any other domestic company, so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under clause (ii) of sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(3) Where the dividend distributed is in respect of any period comprised in the previous year ending on the 31st day of March, 1990, no deduction shall be allowed in respect of such dividend.

Explanation: For the purposes of this section, the expressions,-

(i) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bak constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3

of the Banking Companies (Acquision and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank included in the second schedule to the Reserve Bank of India Act, 1934 (2 of 1934) and which is a domestic company;

(ii) "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);

(iii) "State financial corporation" and "State industrial investment corporation" shall have the same meanings as in section 43B;

(iv) "due date" means the date for furnishing the return of income under sub-section (1) of section 139].

[168][169]Deduction in respect of royalties, etc., from certain foreign enterprises.

[170]80-O [171][Where the gross total income of an assessee, being an Indian company [172][or a person (other than a company) who is resident in India]], includes any income by way of royalty, commission, fees or any similar payment received by the assessee from the government of a foreign State or a foreign enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to such government or enterprise by the assessee,

or in consideration of [173][technical or professional services] rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, [174][***] [175][and such income is received in convertible foreign exchange in India, or having been received in covertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction of an amount equal to fifty per cent of the income so received in, or brought into, India, in computing the total income of the assessee];

[176][***]

[177][Provided [178][***] that such income is received in India within a period of six months from the end of the previous year, or where the [179][Chief Commissioner or Commissioner] is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the [179][Chief Commissioner or Commissioner] may allow in this behalf.]

[180][Explanation: For the purposes of this section, -

(i) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve

Bank of India as convertible foreign exchange for the purposes of the law for the time being in force for regulating payments and dealings in foreign exchange;

[181][(ii) "foreign enterprise" means a person who is a non-resident.]]

[182][(iii) services rendered or agreed to be rendered outside India shall include services from India but shall not include services rendered in India.]

[183](2) [***]]

[184][Deduction in respect of profits and gains from the business of publication of books.

80Q. (1) Where in the case of an assessee the gross total income of the previous year relevant to the assessment year commencing on the 1st day of April 1992 or to anyone of the four assessment years next following that assessement year, includes any profits and gains derived from a business carried on in India of printing and publication of books or publication of books, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

(2) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHC or section 80-I or section 80-IA or section 80-J or section 80P in relation to any part of the profits and gains referred to in sub-section (1), the deduction under sub-section (1) shall be allowed with reference to such profits and gains

included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHC, section 80-I, section 80-IA, section 80J and section 80P.

(3) For the purpose of this section, "books" shall not include newspapers, journals, magazines, diaries, brochures, tracts, pamphlets and other publications of a similar nature by whatever name called.

SECTION-II

4.3 INTERPRETATION OF STATUTORY PROVISIONS:

1. Section 79:
Carry-forward and set-off of losses in the case of certain companies:

The provisions relating to the carry-forward and set-off of losses in case of a company are as under:

(1) Introduction of provision: The provisions of section 79 are new in the sense that these have no corresponding provisions in the 1922 Act.

(2) Provision does not apply to a case under the 1922 Act.

(3) Bar of carry forward on change of shareholding: Section 79 enacts a bar on the carry-forward and set-off of loss of a closely held company, i.e. a company in which the public are not substantially interested. Accordingly, where a change in the shareholding has taken place in the previous year in such a company, no loss incurred in any year prior to the previous

year shall be carried forward and set-off against the income of the previous year.

(4) Exception: However, the bar of the carry-forward and set-off of loss on the change in the shareholding would not apply in the following circumstances:

[i] Where on the last day of the previous year, the share of the company carrying not less than 51% of the voting power were beneficially held by a person who beneficially hold shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred. It follows, therefore, that the shares carrying atleast 51% of the voting power should have been beneficially held by one and the same person on both dates, i.e. on the last day of the previous year and also on the last day of the year or years in which the loss was incurred; or

[ii] Where the Assessing Officer is satisfied that the change in the shareholding was not effected with a view to avoiding or reducing any liability to tax. (This exception will not be available in the assessment year 1989-90 on account of omission of clause (b) w.e.f. 1.4.1989).

In either of the two situations mentioned above, the company will be entitled to carry-forward and set-off the loss of earlier year on change of the shareholding. The language of section 79 is unambiguous. Despite the clear language of

of this section, the High Courts have gone wrong in interpreting the provisions of this section. The Bombay High Court took a wrong view that it was wrong to hold the clauses (a) and (b) or section 79 were totally independent and there was no interconnection between the two. Therefore, the word 'unless' (in section 79) according to the grammatical meaning is equivalent to 'if not' and this word followed by the disjunctive 'or' occuring between clauses (a) and (b) clearly on a grammtical interpretation goes to show that clauses (a) and (b) are to be applied disjunctively and if either of these clauses is satisfied, the ban created by section 79 cannot apply. The Madras High Court, on a wrong interpretation of the judgment of the Gujarat High Court as above and following the aforesaid decision of the Bombay High Court went wrong in holding that conditions (a) and (b) of section 79 are cumulative and unless both the conditions are satisfied, the assessee cannot be deprived of the benefit of section 79. However, the Supreme Court removed this confusion by holding that the above conditions were alternative and on the fulfilment of either of them, the company was entitled to the benefit of carry forward and set off of losses. It is fortunate that the Finance Act, 1988, has omitted clause (b) w.e.f. 1.4.1989 to settle the controversy.

(5) (a) Provision when not applicable: In view of the proviso inserted by the Finance Act, 1958, w.e.f. 1.4.1989, the provision

of section 79 shall not apply to a case where a change in the voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift. It may be observed that the logic of insertion of this proviso which was not there in the Finance Bill, 1988, is quite interesting but should not be confused with what has been provided in clause (a) by way of exception.

(b) Other allowances not covered: Section 79 deals only with the carry-forward and set-off of losses. Therefore, the carry-forward of unabsorbed depreciation or development rebate is not covered by this section.

2. Section 115J:
Special provisions relating to certain companies.

(1) Introduction: This section, which was inserted by the Finance Act, 1987, with effect from the assessement year 1988-89, replaces section 80 VVA and applies to all companies, except to the electricity companies. Even apart from the express statutory exclusions with effect from 1st April, 1989, the section, during the first year of its existence (assessment year 1988-89) could not possibly apply to an electricity company since the accounts of an electricity company are to be prepared in accordance with the special requirements of section 11 of the Indian Electricity Act, 1910, and section 57

of the Electricity (Supply) Act, 1948; in view of the proviso to section 211(2) and section 616 of the Companies Act, 1956, parts-II and III of Schedule VI to the Act do not apply to an electricity company.

(2) Object of Provision: Under the existing provisions of the Income-tax Act, certain deductions are allowed in the computation of profits and gains of business or profession. Various deductions are also allowed under Chapter VI-A in computing the total income. As a result of these concessions, certain companies making huge profits were managing their affairs in such a way as to avoid the payment of income-tax. With a view to making the tax system more progressive, a new Chapter XII-B has been inserted.

(3) 30% of book profit of companies taxable: Under section 115J, in the case of any company whose total income as computed under the other provisions of the Income-tax Act in respect of any previous year is less than 30% of its 'book profit', the total income of such taxpayer chargeable to tax shall be deemed to be the amount equal to 30% of such book profit.

(4) 'Book profit', accordingly, means the 'net profit' as shown in the profit and loss account in the relevant previous year prepared in accordance with the provisions of Parts-II and III of the sixth schedule to the Companies' Act, 1956, subject to adjustments in respect of any amount of income-tax paid or payable, any amount carried to any reserves

set aside to meet any provision or provision for losses of subsidiary companies or any amount sett apart for declaration of dividends which are taken into the profit and loss account prepared in accordance with the sixth schedule as above. However, the expenditure relating to income as well as the receipts relating to incomes to which the provisions of Chapter-III apply as also the amount of the loss or the amount of depreciation which would be required to be set-off against the profit of the relevant previous year, as if the provisions of the first proviso (b) to section 205 (1) of the Companies Act, 1956, are applicable will be excluded from the computation of the 'book profit' and 30% of such book profit shall be treated as total income of the company.

(5) Carry-forward of unabsorbed depreciation, etc., not affected: Sub-section (2) of this section provides that the aforesaid provisions shall not affect determination of the amount to be carried forward to the subsequent years under the provisions of sub-sections 32(2), 32A(3), 72, 73, 74 and 80J relating to unabsorbed depreciation, unabsorbed investment allowance, unabsorbed loss and unabsorbed deduction relating to tax holiday.

(6) Omission of section 80-VVA: As a consequential amendment, Chapter VI-B containing sole section 80VVA relating to restriction on certain deductions in the case of companies has been omitted by the Finance Act, 1987, w.e.f. 1.4.1988.

(7) Two processes involved in administering provision: Section 115J involves two processes; firstly, an assessing authority has to determine the income of the company under the provisions of the Income-tax Act; secondly, the book profit is to be worked out in accordance with the explanation to section 115J(1) and it is to be seen whether the income determined under the first process is less than 30% of the book profit. Section 115J would be involved if the income determined under the first process is less than 30% of the book profit. The explanation to sub-section (1) of section 115J gives the definition of the 'book profit' by incorporating the requirement of section 205 of the Companies Act in the computation of the book profit. Brought forward losses or unabsorbed depreciation, whichever is less, would be reduced in arriving at the book profit.

(8) Section 194 Dividends: Section 194 corresponds to the provisions contained in section 18(3D) of the 1992 Act.

(9) Relevant rules and forms: Rules 27, 28, 29, 36A, 37 and 37A are relevant to this section. Rule 30A provides for giving credit in respect of tax deduction at-source to a person other than the registered shareholder in certain circumstances.

(10) Deduction of tax from dividends: Tax should be deducted from dividends paid by an Indian company or a company which has made the prescribed arrangements for the declaration

and payment of dividends within India, except in the following cases, in which the dividend should be paid without any deduction:

(a) the total dividend during the financial year does not exceed Rs.2,500; and (i) the shareholder is a resident individual, (ii) the company is one in which the public are substantially interested (section 2(18)), and (iii) the dividend is paid by an account payee cheque (first proviso);

(b) the shareholder not being a company has under the second proviso obtained from the assessing officer a certificate that his income will be below the taxable minimum;

(c) the shareholder, being a non-resident and not being a company, has obtained a certificate from the assessing officer under section 197(1), authorising payment of dividend without deduction;

(d) the shareholder being a resident individual furnishes a declaration in the prescribed form that his estimated total income of the relevant accounting year will be below the taxable minimum (section 197A); and

(e) the shares are legally or beneficially owned by the government or the Reserve Bank of India or a statutory corporation exempted from income-tax or a mutual fund (section 196) or by the Life Insurance Corporation of India.

The tax is to be deducted 'at the rates in force', i.e. at the rates for deduction prescribed by the relevant Finance Act (section 2(37A)).

The tax should be deducted even in the case of preference shareholders who are entitled under the company's articles of association to dividend at a fixed rate free of tax. This section deals with deduction of the shareholders' tax and not with deduction on account of the company's own tax. However, if under the company's articles of association, a preference dividend is payable subject to deduction of the company's tax, such dividend may be paid after deducting the company's tax, apart from this section, but in the case of such preference shares, the company's tax cannot be deducted in any year in which the company is not liable to pay any tax.

SOME OTHER DEDUCTIONS RELATING TO CORPORATE TAXATION:

1. Section 80G:
Deduction in respect of donations to certain funds, charitable institutions, etc.

(1) Introduction to provision: This section was inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1968, in place of section 88 which corresponded to section 15-B of the 1922 Act and which was omitted.

Donations for charitable purposes constitute mere application of income and are not deductible from the assessee's

total income. This section grants a partial deduction in respect of such donations. Before section 15-B of the 1922 Act, which corresponded to this section, was amended by the Finance Act, 1953, that section exempted from tax, donations to any institution or fund which was established in India for a charitable purpose, provided it was approved by the Central Government for the purposes of that section. From time to time, the Central Government published lists of several institutions and funds, established in various parts of India, which were approved by it for the purposes of that section. After the amendment of the old section 15-B in 1953 and under this section, the Government's approval of the institution or fund is no longer required and relief is allowable in respect of donations to any non-commercial charitable fund or institution established in India, provided it fulfils the specified conditions. The section also grants deduction in respect of donations for the renovation or repair of places of public worship or of historic, archaeological or of artistic importance, notified by the Central Government.

The definition of 'charitable purpose' is given in section 2(15). A public religious fund or institution is 'charitable' on general principles and a donation made before 1st April 1964 to such a fund or institution qualified for tax relief, provided the fund or institution was non-communal in character. But such donations made after the said date are no longer entitled to tax benefit since 'charitable purpose' has now

been defined as not including any purpose, the whole or substantially the whole, of which is of a religious nature.

An initial gift, which is made for the purpose of starting or constituting a fund or an institution is covered by this section.

Upto the assessment year 1975-76, the section also covered donations in kind which has been inserted with effect from the assessment year 1976-77 and which purports to be 'for the removal of doubts', really alters the law. Under explanation 5, no relief can be claimed under this section unless the donation is 'of a sum of money'. These words have to be distinguished from 'cash'. The donation of a fixed deposit receipt would qualify for a deduction under this section, because it represents a sum of money though it is not cash.

While deduction under this section is admissible in computing the total income of a firm, section 80A(3) prohibits the partners from also claiming deduction in their individual assessment.

While sub-section (3) enacts that benefit under this section cannot be claimed if donations is less than Rs.250, sub-section (4) read with section 80-B(5), lays down the maximum limit upto which donations qualify for tax relief. But the maximum limit does not apply to the funds and trusts

laid down in sub-section (4) applies to the aggregate of the sums referred to in sub-section (2) and not to the quantum of deduction under sub-section (1). This position has been clarified by the new sub-section (4) which was substituted in 1980.

The assessee was held entitled to an exemption under section 15-B of the 1922 Act only in respect of sums which constituted a part of his total income of the relevant accounting year; and consequently, no exemption could be claimed in respect of a sum donated out of the income of an earlier year. But this ruling does not apply under this section, which uses different phraseology from that of the corresponding provision in the 1922 Act. In any event, even under the 1922 Act, it was held that if the donation was made out of the income of the relevant accounting year and the assessee had taxable as well as non-taxable (e.g. agricultural) income and there was no evidence to show that the donation had been made out of non-taxable income, the entire amount of the donation, subject to the limits in the section, was entitled to exemption.

The benefits of a certificate by the Commissioner under this section are obvious and his erroneous refusal to issue a certificate may be corrected by a writ.

2. Section 80GGA:
Deduction in respect of certain donations for scientific research or rural development.

(1) Introduction of the provision: Section 80GGA was inserted by the Finance Act, 1979, w.e.f. 1.4.1980.

(2) Scope of provision: Under section 35(1)(ii)), a taxpayer carrying on a business or profession is entitled to a deduction in the computation of his taxable profits of any sum paid to a scientific research association, which has its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research. It is, however, necessary that such scientific research association, University, college or institution should have been approved by the prescribed authority under section 35CCA, sums paid by taxpayers carrying on business or profession to any approved association or institution which has as its object the undertaking of programmes of rural development to be used for carrying out an approved programme of rural development are allowed as deduction in the computation of their taxable profits. Under an amendment made to section 35CCA by section 5 of the Finance Act, 1979, sums paid by such taxpayers to any approved associations or institutions which has as its object the training of persons for implementing programmes of rural development will also be allowed as deduction in the computation of their taxable income.

It is, therefore, clear that under the provisions referred to above, the deduction in respect of sums paid to the approved scientific research associations or approved associations or institutions set up for executing programmes of rural development was hitherto allowed only in the case of taxpayers carrying on business or profession. The Finance Act, 1979, has inserted a new section, 80GGA, to provide that in the case of taxpayers, other than those carrying on business or profession, the following sums paid durig the previous year will qualify for deduction in the computation of the total income, namely:-

(i) Sums paid to an approved scientific research association, which has as its object the undertaking of scientific research or to an approved University, college or other institution to be used for scientific research;

(ii) Sums paid to an approved association or institution which has as its object the undertaking of any programme of rural development to be used for the purpose of carrying out any approved programme of rural development;

(iii) Sums paid to an approved association or institution which has as its object the training of persons for implementing programmes of rural development. However, from the assessement year 1983-84, it is necessary that the assessee furnishes the certificate referred to in sections 35CCA(2) or (2A) from such association

or institution;

(iv) Sums paid to an approved association or institution which has as its object the undertaking of any programme of conservation of natural resources to be used for carrying out any programme of conservation of natural resources approved under section 35CB (from the assessment year 1982-83);

(v) Sums paid to rural development fund set up and notified by the Central Government for the purpose of section 35CCA(1)(c) (from the assessment year 1983-84).

(3) Deduction not available to an assessee deriving business or professional income: Sub-section (3) of section 80GGA restricts the operation of this provision to those taxpayers who do not derive income from business or profession.

(4) No double deduction: Sub-section (4) provides that any deduction claimed under this section cannot be allowed in respect of the same payments under the other provisions of the Income-tax Act for the same or any other assessment year.

(5) Omission of provision: Section 80GGA has been omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989, but this omission is proposed to be cancelled by clause 95(g) of the Direct Tax Laws (Amendment) Bill, 1988, w.e.f. the same date.

3. Section 80HH:
Deduction in respect of profits and gains from newly established industrial undertaking or hotel business in backward areas:

(1) Introduction of provision: Section 80HH was inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1.4.1974, with a view to giving deductions to newly established industrial undertakings and hotel business in certain specified backward areas.

(2) Availability of deduction: Deduction under section 80HH is available to all assessees whose total income includes any profits and gains derived from an industrial undertaking or a business of the hotel in a backward area.

(i) Industrial undertaking: The expression 'industrial undertaking' has not been defined in the Act. Therefore, the business of a contractor, such as undertaking the construction of an irrigation project or dam would be an industrial undertaking.

(ii) Conditions as to new industrial undertakings: The industrial undertaking under section 80HH will have to fulfil the following conditions:

(a) The production or manufacture of articles should have began in any backward area after December 31, 1970;

(b) It should not have been formed by the splitting up, or the reconstruction, of a business already in existence in any backward area. But this condition would not

apply to any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33-B in the circumstances and within the period specified in that section;

(c) It should not have been formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area. This condition, however, would be satisfied if the total value of machinery or plant or part thereof used previously in backward area and transferred to new business in that area does not exceed 20% of the total value of the machinery or plant used in the business;

(d) It should employ 10 or more workers in manufacturing process carried on with the aid of power or 20 or more workers in a manufacturing process carried on without the aid of power. Even casual workers would come under this category.

(iii) Conditions as to Hotel Business: In the case of a hotel business, the following conditions should be fulfilled:

(a) The business of the hotel should have started in any backward area after December 31, 1970;

(b) It should not have been formed by the splitting up, or the reconstruction, of a business already in existence;

(c) The hotel should have been approved by the central government.

In this connection, it may be noted that, unlike the provision in section 80J, it is not necessary that the business of the hotel should be owned or carried on by a company and accordingly, it will be open to the Central Government to approve any hotel, including a hotel run as a proprietory concern or partnership business, for the purposes of this section.

(iv) Period of availability: The benefit of deduction under section 80HH will be available for each of 10 assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking has begun to manufacture or produce articles or the business of the hotel has started functioning. However, if the manufacture or production of goods or the functioning of the business of hotel has commenced after December 31, 1973, the numebr of 10 assessment years would be reduced by the number of assessment years which expired before April 1, 1974.

(v) Applicability to forest lessees: Where the activity of the forest lessees is not merely the cutting of trees and selling of firewood but the processes involve the making of a different commodity having distinctive name, character or use, i.e. it involves manufacture, the benefit of deduction under section 80HH would be available. Therefore, conversion

of standing trees into sleepers will be an activity of manufacture and covered by section 80HH.

(vi) Quantum of deduction: An amount equal to 20% of the profits and gains derived from the new industrial undertaking or hotel business in backward areas is allowable as deduction under this section.

(vii) Unabsorbed depreciation etc. to be deducted before deduction under this provision: The assessee is not entitled to claim deduction at 20% of the current years income under section 80HH without setting off unabsorbed depreciation and unabsorbed development rebate by earlier years.

(3) Deduction where not permissible: Deduction under section 80HH would not be available in the following cases:

(i) Where a deduction in relation to the profit and gains of a small-scale industrial undertaking to which section 80HHA applies is claimed and allowed under that section for any assessment year, deduction in relation to such profits and gains shall not be allowed under section 80HH for the same or any other assessment year;

(ii) In the case of an undertaking engaged in mining.

(4) Priority of deduction: In a case where the assessee is entitled also to the deduction under section 80-I or 80J in relation to the profits and gains of an industrial undertaking or the business of the hotel to which section 80HH applies,

effect shall first be given to the provision of section 80HH.

(5) Audit of accounts where necessary: Tax concessions under section 80HH is available in the case of all categories of taxpayers, both corporate and non-corporate. However, in the case of taxpayers other than companies and cooperative societies, which are statutorily required to get their accounts audited, the concession will not be available unless the accounts of the industrial undertaking or the business of the hotel are audited by a chartered accountant or other qualified accountant and the taxpayer furnishes along with his return of income the report of such audit in the form prescribed in the Income-tax Rules. The audit report has to be furnished in form 10-C prescribed by rule 18-B.

(6) Prevention of collusive transactions: With a view to preventing the abuse of tax concessions under section 80HH by manipulation of profits between associated concerns or different units of the same concern, the assessing officer has been empowered to determine the reasonable profits that could be attributed to the qualifying undertaking or the business of a hotel in the backward areas in cases where, owing to close connection between the taxpayer and any other person or for any other reason, the course of the business is so arranged that the industrial undertaking set up in the backward area derives more than the ordinary proffits which might be expected to arise in that business. Likewise,

where a taxpayer has several units, some in the backward areas and some outside, the profits of the units in the backward areas will be computed after taking the cost of the goods transferred to or from the units on the basis of the fair market value of such goods.

(7) Specified Backward Areas: As noticed earlier, explanation at the end of this section was substituted by sub-section (11) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986, and the Eighth Schedule to the Act, specifying the backward areas in terms of the Explanation was also omitted. Therefore, the Central Government, in exercise of the powers conferred by sub-section (11), has issued notification no.165 dated 19.12.1986 published in the Gazette of India dated 24.1.1987.

4. Section 80H$_{HA}$:
Deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas:

(1) Introduction of provision: Section 80HHA was inserted by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978, to provide for deduction in respect of profits and gains from new small-scale industrial undertakings (other than those engaged in mining) set up in rural area.

(2) Conditions for applicability of provision to small-scale industrial undertaking: In order to qualify for tax concessions under section 80HHA, the small-scale industrial undertaking

will have to fulfil the following conditions:

(i) The industrial undertaking should begin to manufacture or produce articles after 30.9.1977, in any rural area.

(ii) The industrial undertaking should not have been formed by the splitting up or the reconstruction of a business already in existence. Where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33-B in the circumstances and within the period specified in that section, this condition will not apply and the same will qualify for tax concession;

(iii) The industrial undertaking should not have been formed by the transfer to a new business of machinery or plant previously used for any purpose. In a case where any machinery or plant or any part thereof previously used for any purpose is transferred to a new industrial undertaking and the total value of the machinery or plant so transferred does not exceed 20% of the total value of the machinery or plant used in the business, this condition shall be deemed to have been fulfilled. In this connection, it may be noted that unlike the provision in section 80J of the Income-tax Act, it is not necessary under section 80HHA that the industrial undertaking should have been set up in a new building.

(iv) The industrial undertaking should employ ten or more

workers in a manufacturing process carried on with the aid of power or employ twenty or more workers in a manufacturing process carried on without the aid of power.

(3) Period of deduction: The deduction shall be allowed in computing the total income of each of the ten previous years beginning with the previous year in which the industrial undertaking has begun to manufacture or produce articles. However, such deduction shall not be allowed in any of the ten previous years in respect of which the industrial undertaking is not a small-scale industrial undertaking.

(4) Quantum of deduction: An amount equal to 20% of the profits and gains of the small-scale industrial undertaking is allowable as deduction.

(5) Priority of deduction: Where the assessee is entitled also to the deduction under section 80-I or section 80J in relation to the profits and gains of a small-scale industrial undertaking to which the provisions of section 80HHA apply, deduction shall first be made under section 80HHA. However, where a deduction in relation to the profits and gains of a small-scale industrial undertaking to which section 80-HH applies is claimed and allowed under that section for any assessment year, the deduction in relation to such profits and gains shall not be allowed under section 80HHA for the same or any other assessment year.

(6) Rural area: Clause (a) of the explanation defines the expression 'rural area' for the purpose of the section. Accordingly, this expression will have the meaning as given in Clause (b) of the explanation to section 35CC(1). Therefore, 'rural area' means any area other than :-

(i) any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(ii) an area within such distance, not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to above, as the Central Government may, having regard to the stage of development of such area (including the extent of and scope for urbanization of such area) and other relevant considerations, specify in this behalf by notification in the Official Gazette.

(7) Small-scale industrial undertaking: Clause (b) of the explanation at the end of section 80HHA defines 'small-scale' industrial undertaking. Accordingly, an industrial undertaking shall be deemed to be a small scale industrial undertaking, if the aggregate value of the machinery and plant (other

than tools, jigs, dies and moulds) installed as on the last day of previous year for the purposes of the deduction of the business of the undertaking, does not exceed:-

(i) Rs. 10.0 lakhs where the previous year ended before 1.8.1980;

(ii) Rs.20.0 lakhs where the previous year ended after 1.8.1980 but before 18.3.1985;

(iii) Rs.35.0 lakhs where the previous year ended on or after 18.3.1985.

For this purpose, the value of any machinery or plant shall be, if owned by the assessee himself, the actual cos thereof to the assessee and where it is hired by the assessee, it will be the actual cost thereof to the owner of such machinery of plant.

5. Section 80HHB:
Deduction in respect of profits and gains from projects outside India:

(1) Introduction of provision: Section 80HHB was inserted by the Finance Act, 1982, w.e.f. 1.4.1983.

(2) Availability of deduction: With a view to encouraging contractors to undertake construction and engineering contracts outside India, section 80HHB provides that where an Indian company or non-corporate assessee, resident in India, derives any profits and gains from the business of execution of a foreign project under a contract entered into by him with the government of any foreign state or with a foreign enterprise

the Indian company or the other assessee will be entitled to a deduction in the computation of taxable income of 50% (25% upto the assessment year 1986-87) of such profits and gains, subject to certain conditions. This concession will also be available where the assessee undertakes the execution of any work in connection with any foreign project undertaken by any other person. However, it is necessary that the consideration for the execution of such project or work is payable in convertible foreign exchange.

(i) Requisite conditions: The deduction under this provision will be admissible only if the following conditions are fulfilled:

(a) The assessee will have to maintain separate accounts in respect of the profits and gains derived from the business of the execution of the project or work forming part of the project. Where the assessee is a person other than a company or a cooperative society, the accounts relating to such project should be audited by a chartered accountant or other qualified accountant as defined in the explanation below section 288(2) of the Act. The assessee will be required to furnish alongwith his return of income, the report of such audit in form no.10CCA prescribed by rule 18-BBA(1) duly signed and verified by such an accountant;

(b) The assessee should have debited to the profit and loss account of the accounting year in respect of which the deduction under section 80-HHB is allowed and

credited to a "Foreign projects reserve account" a sum equal to 50% (25% upto the assessment year 1986-87) of the profits and gains from such project or work. The reserve will have to be utilized during a period of five immediately succeeding assessment years for the purpose of business and not for distribution by way of dividends or profit;

(c) The assessee should have remitted into India in convertible foreign exchange an amount equal to 50% (25% upto the assessment year 1986-87) of such profits and gains within a period of six months from the end of the relevant accounting year or within such extended period as the Chief Commissioner or Commissioner may allow on being satisfied that the assessee was prevented from complying with this condition for reasons beyond his control.

Where, however, the amount credited by the assessee to the Foreign Project Reserve Account or the amount so remitted into India or either of these amounts is less than 50% of such profits and gains, the deduction will be restricted to the amount so credited to the Foreign Projects Reserve Account or the amount actually brought into India, whichever is less.

(ii) No other deduction: Sub-section (5) ensures that any deductions in respect of profits and gains from foreign project

or work would be available under any other provisions of Chapter VIA under the heading "C - Deductions in respect of certain incomes", except under section 80HHB.

(3) Foreign Project: The benefit of this concession will be available in respect of projects for construction of any building, road, dam or other structure outside India, the assembly or installation of any machinery or plant outside India and the execution of such other work outside India of whatever nature as may be prescribed by the Board. However, the assessee will not be eligible for this concessions unless consideration for the execution of such project or work is payable in convertible foreign exchange, which is for the time being treated by the Reserve Bank of India was convertible foreign exchange for the purposes of Foreign Exchange Regulation Act, 1973, and any rules made thereunder.

6. SECTION 80HHC:
Deduction in respect of profits retained from export business:

The old section 80A, which granted relief in respect of export turnover was brought into force from 1st June 1982. It was soon replaced with substantial alterations by the original section 80HHC which came into force from 1st April, 1983 and which granted a deduction based on a percentage of the export turnover. The section was substituted by the Finance Act, 1985, with effect from 1st April, 1986; that

section which granted a deduction with reference to export profits and later also with reference to foreign exchange realization, required the amount of deduction to be 'utilized for the purposes of the business of the assessee'. Therefore, the heading of the section 'Deduction in respect of profits retained for export business' was then appropriate. But this requirement was dispensed with when the section was substantially altered by the Finance Act, 1988, with effect from 1st April, 1989, and therefore, the heading of the section is now misleading.

With the 1989 amendments, the section for the first time: (i) exempts the entire profits derived from export, and (ii) makes express provision for dividing the exemption between a recognized Export House or Trading House and the supporting manufacturer (explained in the section). TThe main requirements of the section are that:-

(a) The assessee should be an Indian company or any other non-corporate person, resident in India, engaged in the business of export;

(b) The sale proceeds of goods or merchandise exported should be receivable by the assessee in convertible foreign exchange (sub-section 2(a) and explanation (a) to the section);

(c) The goods or merchandize exported should not be minerals or ores (sub-sections (2)(b)); and

(d) the assessee should furnish the report of an accountant certifying the correctness of the claim for deduction, and in the case of a supporting manufacturer also an auditor's certificate from the Export House or the Trading House to ensure against double deduction (sub-sections (4) and (4A), read with Rule 18BBA).

Sub-section (3)(a) provides that 'profits derived from the export of goods' (which enjoy exemption under this section) are the profits of the business as computed under the head "Business" in a case where 'the business carried on by the assessee consists exclusively of the export' of such goods. The word 'exclusively' should be read in a reasonable sense. If the whole production of the assessee is exported and only the 'rejects' (i.e. goods not coming upto the standard quality) which constitute an insignificant portion of the total production, are not exported but sold locally, the provisions of sub-section (3) must be held satisfied. Needless to add the fact that the assessee also carries on an independent separate business involving local sales is wholly irrelevant.

While a deduction under this section is admissible in computing the total income of a firm, section 80A(3) prohibits partners from also claiming a deduction in their individual assessments.

7. SECTION 80HHD:
Deduction in respect of earnings in convertible foreign exchange:

1. Introduction of provision: Section 80HHD is proposed to be inserted by clause 16 of the Direct Tax Laws (Amendment) Bill, 1988, w.e.f. 1.4.1989.

(2) Deduction in respect of earnings in convertible foreign exchange:

(i) Eligible Assessee: Under this section, the following classes of assessee are eligible for deduction:

(a) Any Indian company, or

(b) Any non-corporate resident person, engaged in the business of a hotel which is approved by the prescribed authority, or a travel agent.

(ii) Quantum of deduction: The deduction available to the eligible assessees abovementioned shall be a sum equal to the aggregate of -

(a) 50% of the profits derived from services provided to foreign tourists; and

(b) So much of the amount out of the remaining profits derived by it from services provided to foreign tourists as is debited by the assessee in the profit and loss account and credited to a reserve account to be utilized by the assessee for the purpose of his business in the manner laid down in sub-section (4).

(i)

(iii) Provision when applicable?: Sub-section (2) of the proposed new section 80HHD provides that the provisions of the new section shall apply only to the services provided to foreign tourists and receipts in relation to which are received by the assessee in convertible foreign exchange.

(iv) Profits derived from services to foreign tourists what to connote?: According to sub-section (4), for the purpose of sub-section (1), the profit derived by the assessee from the services provided to the foreign tourists shall be:

(a) In a case where the business carried on by the assessee consists exclusively of the services provided to foreign tourists, resulting in receipts in convertible exchange, the profits of the business, as computed under the head "Profits and gains of business or profession"; and

(b) In a case where the business of the assessee doesn't consist exclusively of services provided to the foreign tourists resulting in receipts in convertible foreign exchange, the amount which bears to the profit of the business of the assessee, the same proportion as the receipts in convertible foreign exchange on account of services provided to the foreign tourists bear to the total receipts of the business carried on by the assessee.

(v) Purposes for which amount credited to the reserve to be utilized: Sub-section (4) provides that the amount credited by the

assessee to the reserve account under clause (b) of sub-section (1) shall be utilized by the assessee before the expiry of a period of five years from the year in which the amount was credited for the following purposes:-

(i) Construction of new hotels, approved by the prescribed authority or expansion of facilities in the existing hotels already so approved;

(ii) Purchase of new cars and new coaches by the travel agents;

(iii) Purchase of sports equipment for mountaineering, trekking, golf, river-rafting and other sports in and on water;

(iv) Construction of conference or convention centres;

(v) Provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify for this purpose.

However, where any of the aforesaid activities would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

(vi) Consequences of misutilization or non-utilization of the amount of reserve: Sub-section (5) seeks to provide that where any amount credited to the reserve account has been utilized by the assessee for any purpose other than those referred to in sub-section (4) then the amount so utilized be charged to tax accordingly. Similarly, where any amount

credited to such reserve account has not been utilized in the manner specified in sub-section (4), then the amount not so utilized shall be deemed to be the profits in the year immediately following the period of five years specified in sub-section (4) and shall be charged to tax accordingly.

(vii) Availability of deduction conditional upon submission of report of the accountant: Sub-section (6) provides that the deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant certifying that the deduction has been correctly claimed on the basis of the amount of convertible foreign exchange received by the assessee in respect of services provided by him to the foreign tourists. For this purpose, the accountant will be the person defined in Explanation below sub-section (2) of section 288.

(viii) Services provided for foreign tourists: In terms of clause (c) of the explanation "Services provided to the foreign tourists" shall not include any services provided by way of sale in any shop owned or managed by any person who carries on the business of a hotel or or a travel agent.

8. SECTION 80-I:
Deduction in respect of profits and gains from an industrial undertaking after a certain date, etc.:

(1) Legislative history: Section 80-I has a chequered legislative

history. This section, as originally inserted by the Finance (no.2) Act, 1967, w.e.f. 1.4.1968 dealt with a different topic, namely, the deduction in respect of certain priority industries and that topic was initially dealt with by Section 80E which was introduced by the Finance Act, 1966, w.e.f. 1.4.1966, and later on, the topic was transferred to section 80-I.

(1) Original Section 80-I: Section 80-I, as originally introduced with effect from 1.4.1968, was in the following terms:

80-I : Deduction in respect of profits and gains from priority industries in the case of certain companies:

1. In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent thereof, in computing the total income of the company.

2. This section applies to a domestic company, save in case where such company is a company, which is referred to in section 108 and has a gross total income of fifty thousand rupees or less.

3. Where a company to which this section applies is entitled also to the deduction under section 80H, the deduction under sub-section (1) of this section, shall be allowed with reference to the amount of the profits and gains attributable

to the priority industry or industries as reduced by the deduction under section 80H in relation to such "Profits and Gains".

(ii) Introduction of present section 80-I: The present section 80-I was inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1981, to provide for deduction in respect of profits and gains from industrial undertaking, etc., starting functioning after 31.3.1981.

(3) Deduction in respect of priority industries (Old section 80-I): As noticed earlier, old section 80-I and its predecessor section 80E were in force from the assessment year 1966-67 to 1972-73. Cases relating to the provisions of these sections are still pending in the courts. Therefore, it will be useful to indicate some points with reference to the old provisions.

(i) Eligible assessee: The benefit under old section 80E/ 80-I was available only to the companies which fulfilled the following requirements:

(a) It should be a domestic company;

(b) It should be a private company, i.e. it should not be a company in which public were substantially interested;

(c) Its gross total income of the previous year in question should be above Rs.50,000/-;

(d) The gross total income should include any profits

and gains attributable to a priority industry.

(ii) Attributable to - Connotation of: The deduction under old section 80-E/80-I was a certain percentage of the profits and gains attributable to the business of the priority industry. The expression 'attributable to' was of wider import and since the expression of a wider import had been used, it was clear that the legislature intended to cover receipts from sources other than the actual conduct of the business of the priority industry.

Therefore, where the profits were attributable to a priority industry, the circumtances that during the previous year, the priority industry was not carried on by the assessee, did not make difference.

(iii) Profits eligible for deduction: The following receipts were held to be profits and gains attributable to the business of a priority industry:

(a) Profits on sale of assets and interest on security deposits;

(b) Profits on sale of cottonseed oil cake, link, husk, etc., which were by-profits in the business of manufacture and sale of cottonseed oil, the priority industry;

(c) Fee received for supplying technical knowhow for commissioning pulp and paper plant;

(d) Profits from the sale of import entitlements by the priority industry;

(e) Cash subsidy received on exports;

(f) Interest received from the distributor by the company manufacturing gears, in terms of agreement, for delayed settlement of bills;

(g) Balancing charge assessable under section 41(2);

(h) Technical service fee received under collaboration agreement;

(i) Export incentives;

(j) Profit on sale by a truck manufacturer of imported spareparts to the purchasers of its trucks;

(k) Rent of leased machinery;

(l) Profit on sale of scrap;

(m) Relief under section 80-I was restricted to the manufacture and sale of listed items but was also available where the listed items were manufactured and used as components by the assessee;

(n) Profit from the sale of lime manufactured out of limestone produced in the assessee's quarries where the manufacture of limestone and lime were integrated;

(o) Cash subsidy and refund of drawback duty.

(iv) Receipts not forming part of eligible profits: However, the following receipts would not constitute the part of profits eligible for deduction:

(a) Interest on investment of surplus funds or interest on bank deposits;

(b) Interest on investment of contingency reserve maintained by an electric company under statutory obligations;

(c) Interest on fixed deposits with a bank;

(d) Profits on sale of imported goods by utilizing import entitlements.

(v) Computation of eligible profits: The profits and gains eligible to deduction would be computed in accordance with the provisions of the Act. Accordingly, the computation would be made after making deduction provided in the Act. If the income, as computed under section 80-B(5) was nil, nor relief could be granted under section 80-I in view of the limitations contained in section 80A(2). Therefore, the following deductions would have to be made:

(a) Unabsorbed depreciation and unabsorbed development rebate;

(b) Carried forward unabsorbed losses.

But the following items would not be deductible:

(a) Carried forward deficiencies under section 80J;

(b) Deduction under sections 80J or 80K;

(c) Loss incurred in the same year qua non-priority industry;

(c) Loss incurred in other priority industry.

Deduction in respect of newly established industrial undertakings, ships and hotels: This section, which was inserted by the Finance (no.2) Act, 1980, with effect from 1st April 1981 virtually replaces section 80J. Several words, phrases and concepts are common to sections 32A, 80-I,

80J and the deleted section 109 (i-a). Notes on them are all collected together under section 80J. As regards the interpretation of various expressions in this section, which are the same as, or similar to those of section 80J, reference may be made to the commentary under that section.

While a deduction under this section is admissible in computing the total income of a firm, section 80A(3) prohibits the partners from also claiming a deduction in their individual assessments.

9. SECTION 80JJ:
(Deleted by the Finance Act, 1985, w.e.f. 1.4.1986)

Deduction in respect of profits and gains from the business of poultry farming:

Where the gross total income of an assessee includes any profits and gains derived from the business of poultry farming, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to thirty-three and one-third per cent thereof.

The old section 80JJ was inserted in place of section 10(27) which was deleted by the Finance Act, 1975, w.e.f. 1.4.1976. The old section 80JJ gave partial exemption to profits from the business of livestock-breeding, poultry or dairy farming, which had enjoyed total exemption under section 10(27) for the assessment year 1964-65 to 1975-76. Even this partial exemption was lost with the deletion of the old section 80JJ by tne Finance Act 1985 w.e.f. 1.4.1986. The relief under the present

section introduced by the Finance Act, 1989, w.e.f. 1.4.1990, is more liberal but is restricted to poultry-farming. However, the question would still arise whether on the facts of a particular case, the profits from the aforesaid activities should be treated as agricultural income within section 2(1A) and, therefore, wholly exempt under section 10(1).

The assessee may claim deduction under this section in addition to the deduction available under section 80J.

While deduction under this section is admissible in computing the total income of a firm section 80A(3) prohibits the partners from also claiming deduction in their individual assessments.

10. SECTION 80M:
Deduction in respect of certain inter-corporate dividends:

(1) Introduction of provision: Section 80M was introduced in place of old section 85-A by the Finance (No.2) Act, 1967, w.e.f. 1.4.1968; Section 85-A was inserted by the Finance Act, 1965, w.e.f. 1.4.1965 and was deleted w.e.f. 1.4.1968. Prior to section 85A, this topic was dealt with under section 99(1)(iv).

(2) Scope of provision: As noticed earlier, this section has undergone as many as eight amendments since its inception in 1968. Till the assessment year 1984-85, full deduction was

granted in respect of income by way of dividends received by a domestic company from a company formed and registered under the Companies' Act, 1956, after 28th February, 1975, and engaged exclusively or almost exclusively in the manufacture or production of anyone or more of the specified priority articles. In respect of other dividends received from a domestic company, deduction was allowed at the rate of 60 per cent of such income.

However, from the assessment year 1985-86, the position is quite different. On the consideration that there is little justification for continuing to provide complete exemption in respect of the dividend income from certain companies as aforesaid, the Finance Act, 1984, amended section 80M, w.e.f. 1.4.1985, to provide a uniform rate of deduction at 60% for all the dividends received by a domestic company from another domestic company.

Though section 80M was substituted by the Finance Act, 1986, w.e.f. 1.4.1987, consequent upon the omission of section 80K, the rate of deduction is 60% of the inter-corporate dividends from the assessment year 1987-88; however, with a difference, that from this assessment year, the qualifying dividend would not be reduced by deduction under section 80K as earlier, because section 80K has been omitted w.e.f. 1.4.1987.

(4) Deduction on net and not on gross dividend: The Supreme Court had earlier taken the view that the deduction under section 80M was to be allowed on the gross dividend and not onn the net dividend after deducting expenses incurred in earning it. The Bombay High Court also held the same view. This necessitated the legislative intervention and section 80AA was inserted by the Finance (No.2) Act, 1980, with full retrospective effect from 1.4.1968, to overcome the decision of the Supreme Court in cloth-trader's case to provide that deduction will be available only on the net dividend, with a saving for the decisions of the Supreme Court rendered before 18.6.1980.

However, the Supreme Court itself interpreted the provisions of section 80M on a writ petition no.2043 of 1981, in which the vires of section 80AA was also challenged and decided the petition on 1.7.1985 to hold that the deduction received to be allowed under that provision has to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee. The Supreme Court also held in that case that section 80AA in its retrospective operation was merely declaratory of the law as it always was since 1.4.1968. Accordingly, the earlier decision in Cloth Traders (P) Ltd. vs. Addl.CIT was overruled,

relying on Cambay Electric Supply Industrial Company Limited vs. CIT.

Therefore, the position is that deduction under section 80M is allowable on the net dividend computed in accordance with the provisions of the Act and not on the gross dividend.

However, for the assessment years 1963-64 to 1967-68, the relief under section 85A (old section, as it stood before 1.4.1968) and also section 99(1)(iv) would be available with reference to the gross dividends and not to the net dividends.

It, therefore, goes without saying that interest on the moneys borrowed for earning dividend income will have to be deducted before allowing deduction under section 80M.

(5) Deduction under this section after setting-off losses: Deduction under section 80M is to be made after setting off losses under sections 71 and 72. Under section 71, the assessee is entitled to have the entirely of its business loss from one head set-off against its income under any other head. The section does not permit the assessee to have only a part of the loss to be so set-off against the income from other heads and carry forward the balance. The assessee is not, therefore, entitled to partial set-off, thereby converting its actual negative income, i.e. loss in any particular year to a positive income, i.e. profits, so as to claim a relief u/s. 80M.

(6) Benefit available to the insurance company: Even though in the case of an insurance company, the different classes and categories of income, viz. income from house property, capital gains or income from other sources are not separately computed in accordance with the computation sections for the respective heads of income, the different classes or categories of income, which are shown in Form no.F of the Third Schedule to the Insurance Act, 1938, do not lose their character or quality. It is to be noted that neither section 80M nor section 80AA uses the expression income chargeable under the head "Income from other sources", including dividend. In the absence of any such provision, it is not permissible to equate the expression "Income by way of dividend" with "Income" chargeable under the head "Income from other sources", including dividend. Therefore, the dividend income included in the profits of an insurance company is entitled to relief under section 80M.

7. Assessee need not be a registered shareholder: If the gross total income includes any income by way of dividends, the assessee is entitled to the benefit of the deduction as specified in section 80M. Section 80M does not postulate that in order to become entitled to the deduction under the said section in respect of income by way of dividend earned from the shares, the assessee company must be the registered holder of shares in respect of which income by way of dividend is earned. Accordingly, where the dividend income realised through a trust is assessed in the hands of the

assessee company, deduction under section 80M cannot be denied.

8. No deduction if income is negative: If the gross total income being computed happens to be a loss, no relief can be granted under section 80M. Deduction from total income under section 80M cannot exceed the assessee's gross total income. Where such gross total income is found to be a net loss in the year concerned, because of the losses suffered during the year, there is no question of any further deduction of 60% of the dividend earned under section 80M.

11. SECTION 80-O:
Deduction in respect of royalties, etc., from certain foreign enterprises:

Introduction of provision: Section 80-O was inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1968, in place of section 85C, which was simultaneously deleted.

1. Eligible assessee: Under section 80-O, an Indian company is entitled to a deduction of royalty, etc., received from the government of a foreign state or a foreign enterprise. For the assessment years 1972-73 to 1974-75, a resident non-corporate assessee was also entitled to a deduction under this provision.

2. Deduction of royalty, etc., for technical knowhow or technical services for use outside India: Under section 80-O, any income by way of royalty, commission, fees or any similar

payment received by the assessee and included in its gross total income will qualify for deduction, if the requirements of this provision are fulfilled.

(i) The relevant requirements of this section are:

(a) Income should be by way of royalty, commission, fees or any similar payment;

(b) It should be received by the assesseee from the government of a foreign state or a foreign enterprise;

(c) It should be in consideration of the technical knowhow made available or agreed to be made available or technical services rendered or agreed to be rendered by the assessee under an agreement approved by the Board (by the Chief Commissioner or the Director-General from 1.4.1989), in this behalf; and

(d) Such income is received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange.

(ii) Foreign Enterprises: In section 80-O, the words "the Government of a foreign state or a foreign enterprise" must be read together. The words "foreign enterprise" must take colour from the words "the government of a foreign state". Therefore, the words "foreign enterprise" must be read to mean an enterprise of a foreign national or of foreign ownership. As such, these words cannot apply to an establishment or undertaking of an Indian company in a foreign country.

(iii) Information: It may be observed that under section 80-O, apart from the technical knowhow, information is also contemplated. However, the information must concern industrial, commercial or scientific knowledge, experience or skill. The word 'science' is a very general word. Statistical tables complied after analysing masses of numerical data can be said to be commercial or scientific knowledge. Therefore, information regarding radio listening habits of people in India to be supplied to the BBC will fall under this category.

(iv) Use: The section employs the word 'use' to state that the relief thereunder is available in consideration for the 'use' outside India of information, etc. This word is a very general word. It does not imply that the information supplied must result in the manufacture or making of some concrete thing. What is required is only that the use of information, etc., must be

outside India. Therefore, testing the certification done by the assessee in India will not fall within section 80-O.

(v) Technical services: Technical services in section 80-O would not include commercial services or managerial services. Managerial services may be professional service like legal or medical service, but it would not be technical service like engineering service. Therefore, the services of Managing Agents rendered by an Indian company to a foreign company are not 'technical services' within the meaning of this section.

(3) Board or Chief Commissioner or Director-General to follow procedural rules and rules of natural justice: In exercising jurisdiction to grant 'approval under section 80-O', the Board or the Chief Commissioner or the Director-General, should exercise administrative powers, but from the wording of the said section, it appears that the said authority is duty-bound to exercise its discretion. The Board of the Chief Commissioner or the Director-General is required to act as an Administrative Tribunal and to follow the procedural rules and the rules of the natural justice.

(4) Application for approval: The applilication for the approval of the agreement will have to be made to the Board of the Chief Commissioner or the Director-General before the first day of October of the assessment year in relation to which the approval is first sought. However, it does

not mean that the approval should also have been obtained before the the first day of October. Even the language of this section before 1.4.1972 in regard to the agreement being approval before the first day of October was held to be merely directory.

Where the assessee company concludes three agreements, viz. knowhow agreement, service agreement and investment agreement, with a foreign enterprise to help establish sugar factory in foreign territory and omits to mention knowhow agreement in the application for approval by the Chief Commissioner but gives details of both knowhow agreement and service agreement, the Chief Commissioner should consider the application for approval as relating to both agreements and an omission by oversight should not be taken to deprive valuable right.

(5) Approval for same agreement not necessary every year: It may be noted that the approval for the same agreement is not necessary for every year.

(6) Interference by Court in a writ: The scope of the judicial review under Article 226 of the Constitution in respect of an order passed by the Board, etc., under section 80-O is not that of an appeal. It is only if the undertaking of section 80-O by the Board or the Chief Commissioner or the Director-General shows an error of a foreign company

is not one for rendering technical services. However, running of modern hotel requires highly specialized management techniques and combination of scientific management and highly specialized inn-keeping. Accordingly, such a service would be a technical service. Loaning of services of engineers and draughtsmen would amount to rendering of technical services.

5. Approval of agreement by the board and from the assessment year 1989-90 by the Chief Commissioner or the Director-General:

(i) Agreement need not be between the assessee and the foreign party: The language of section 80M, omitted w.e.f. 1.4.1984, showed that where an agreement was required to be done between an assessee and a third-party, the section in terms prescribed this requirement. Any such express requirement that the agreement should be between the assessee and the foreign party is absent in section 80-O. Therefore, under section 80-O, it is not necessary that the agreement referred to therein should be between the assessee and the foreign party. All that is required is that the assessee should have rendered, inter-alia, technical services under an agreement and this agreement should be approved by the board (or by the Chief Commissioner or the Director-General, w.e.f. 1.4.1989). Therefore, where an Indian company renders technical services to a foreign enterprise through an Indian government agency and the agreement is between the said agency and the foreign enterprise, it will qualify for approval by the Board.

Even if the Indian company appoints another company

to carry out certain work relating to setting up of a project in Kuwait under its agreement with the Kuwaiti Government and the technical services are rendered outside India, the agreement would qualify for approval.

(ii) Agreement to mention receipt from foreign government, etc.: It is necessary that an agreement must mention that payment has to be made by a foreign government or a foreign enterprise. If otherwise, the agreement cannot be approved.

6. Deduction on net amount: From the assessment year 1981-82, the deduction under this section will be only with reference to the net amount of income in view of section 80AB. Therefore, the decisions holding that deduction was available with reference to the gross amount and not the net amount of income with reference to the assessment year prior to 1981-82 are no longer good law.

7. Deduction in respect of income from business of publication of books (Section 80-Q): Section 80-Q has been inserted with effect from the assessment year 1992-93, where the gross total income of an assessee includes any profits and gains from the business of printing and publication of books, there shall be allowed, in computing the total income, a deduction of an amount equal to 20 per cent of the profits and gains from such business in respect of the income of the assessment years 1992-93 to 1996-97. The amount of deduction shall be reduced by the amount of deduction,

if any, admissible to the assessee under sections 80HHA, 80HHC, 80-I, 80-IA, 80J or 80P. The expression 'books' does not include newspapers, journals, magazines, diaries, brochures, tracts, pamphlets and other publications of similar nature.

From the above discussion concerning the interpretative analysis, it would be clear that various changes from time to time have been made in these deductions. The deductions have been either newly introduced or omitted altogether. This has complicated the statute and various difficulties arise in getting the deduction. There is a need to simplify the law.

REFERENCES

1. See also circular no.523 dated 5.10.1988.
2. "or" omitted by the Finance Act, 1988, w.e.f. 1.4.1989.
3. Inserted, ibid.
4. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
5. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
6. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
7. Inserted by the Finance Act, 1987, w.e.f.1.4.1988.
8. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
9. Substituted for "prepared in accordance with the provisions of parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956)" by the Finance Act, 1989, w.e.f. 1.4.1989.

10. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
11. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1.4.1990.
12. Substituted for "applies" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
13. Substituted for "if any such amount is debited", ibid.
14. Substituted for "profit and loss account; or" by the Finance Act, , 1989, with retrospective effect from 1.4.1988.
15. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
16. Renumbered by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
17. See also circular no.P(XXI-16) dated 8.1.1965 and circular no.3P(XXI-19) dated 1.5.1966.
18. See rules 27, 29C, 30(1), 30A, 31, 37 and 37(A) and form nos.15B, 15G, 16A, 26 and 27.
19. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
20. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1.4.1965.
21. Substituted by the Finance Act, 1984, w.e.f. 1.6.1984. Original proviso was inserted by the Finance (No.2) Act, 1977, w.e.f. 1.10.1977. See rules 28A and 37B and Form no.14B.
22. "who is resident in India" omitted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
23. Substituted for "one thousand rupees" by the Finance Act, 1987, w.e.f. 1.6.1987.
24. See rule 28(3) and Form no.14.
25. Inserted by the Finance (No.2) Act, 1977, w.e.f. 1.10.1977.
26. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
27. See rule 29 and form no.15.
28. "or the total world income" omitted by the Finance Act, 1965, w.e.f. 1.4.1965.

29. This section was inserted in place of section 88 which was deleted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1968. Now section 88 has taken place of section 80C.
30. See also letter no.10,110421/1/77/C&G(FP) dated 11.1.1977.
31. Substituted by the Finance Act, 1976, w.e.f. 1.4.1977. Earlier, it was substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
32. Substituted by the Finance Act, , 1985, w.e.f. 1.4.1986.
33. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
34. Inserted by the Income-tax (Amendment) Act, 1989, w.e.f. 24.1.1989.
35. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
36. Inserted by the Income-tax (Amendment) Act, 1976, with retrospective effect from 9.9.1975.
37. Inserted by the Income-tax (Amendment) Act, 1989, w.e.f. 24.1.1989.
38. Inserted by the Finance Act, 1982, w.e.f. 1.4.1983.
39. Inserted by the Finance Act, 1985, w.e.f. 1.4.1985.
40. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
41. Inserted by the Finance Act, 1976, w.e.f. 1.4.1977.
42. Inserted, ibid.
43. For notified institution/association under this sub-clause, refer Taxmann's Direct Taxes Circulars, 1991 Edn., Vol.1.
44. For complete list of places of public worship, etc., refer ibid.
45. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
46. Restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
47. Inserted by the Finance Act, 1970, w.e.f. 1.4.1970.

48. Inserted by the Finance Act, 1973, w.e.f. 1.4.1974.
49. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
50. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
51. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
52. Inserted by the Finance Act, 1973, w.e.f. 1.4.1974.
53. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
54. Inserted by the Finance (No.2) Act, 1980, with retrospective effect from 1.4.1962.
55. Substituted by the Finance Act, 1970, w.e.f. 1.4.1971.
56. Restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
57. Inserted by the Finance Act, 1972, w.e.f. 1.4.1973.
58. Inserted by the Finance Act, 1972, w.e.f. 1.4.1973.
59. Inserted by the Finance Act, 1973, w.e.f. 1.4.1974.
60. Inserted by the Finance Act, 1976, w.e.f. 1.4.1976.
61. Omitted by the Finance Act, 1968, w.e.f. 1.4.1969.
62. Inserted by the Finance Act, 1979, w.e.f. 1.4.1980.
63. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
64. Substituted by the Finance Act, 1983, w.e.f. 1.4.1983.
65. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
66. Inserted by the Finance Act, 1982, w.e.f. 1.6.1982.
67. Inserted by the Finance Act, 1990, w.e.f. 1.4.1991.
68. Inserted by the Finance Act, 1983, w.e.f. 1.4.1983.
69. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1.4.1974.
70. See also circular no.484 dated 1.5.1987.
71. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
72. Inserted, ibid.
73. See rule 18B and form no.10C.
74. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
75. Ibid.
76. Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.

77. Inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1981.
78. Inserted by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978.
79. Substituted for the Explanation by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.
80. For notified backward areas, refer Taxmann's Direct Taxes Circular, 1991 edn., Vol.1.
81. Inserted by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978.
82. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
83. Substituted for by the Finance Act, 1981, w.e.f. 1.4.1981.
84. Inserted, Ibid.
85. See rule 18BB and Form no.10CC.
86. Inserted by the Finance (No.2) Act, 1980,1980, w.e.f. 1.4.1981.
87. Substituted by Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
88. Substituted by the Finance Act, 1981, w.e.f. 1.4.1981.
89. Substituted by the Finance Act, 1986.
90. Inserted by the Finance Act, 1982, w.e.f. 1.4.1983.
91. See also circular no.563 dated 23.5.1990 and circular no.575 dated 31.8.1990.
92. Substituted for "twentyfive" by the Income-tax (Amendment) Act, 1986, w.e.f. 1.4.1987.
93. See rule 18BBA(1) and form no.10CCA.
94. Substituted for "twentyfive" by the Income-tax (Amendment) Act, 1986, w.e.f. 1.4.1987.
95. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
96. Substituted for "twentyfive" by the Income-tax (Amendment) Act, 1966, w.e.f. 1.4.1987.
97. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
98. Substituted by the Finance Act, 1985, w.e.f. 1.4.1986.
99. Substituted for "whole of the income" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

100. Substituted by the Finance Act, 1988, w.e.f. 1.4.1989.

101. Substituted for "whole of the income" by Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

102. Substituted by the Finance Act, 1992, w.e.f. 1.4.1992.

103. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

104. Substituted for "receivable" by the Finance Act, 1990, w.e.f. 1.4.1991.

105. Inserted, ibid, w.r.e.f. 1.4.1989.

106. Inserted, ibid, w.e.f. 1.4.1991.

107. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.

108. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.

109. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.

110. Inserted by the Finance Act, 1992, w.e.f. 1.4.1992.

111. Inserted by the Finance Act, w.e.f. 1.4.1992

112. Inserted by the Finance Act, 1988, w.e.f. 1.4.1989.

113. Words "as computed under the head 'Profits and gains of business or profession')" omitted, ibid.

114. Words "(as computed under the head 'Profits and gains of business or profession')" omitted, ibid.

115. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1.4.1987.

116. See rule 18BBA(3) and Form no.10CCAC.

117. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

118. Inserted by the Finance Act, 1988, w.e.f. 1.4.1989.

119. See Rule 18BBA(3) and Form no.10CCAC.

120. Substituted for "income" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

121. See Rule 18BBA(3) and Form no.10CCAB.

122. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1986.

123. See circular no.624 dated 23.1.1992.

124. Substituted for "receivable" by the Finance Act, 1990, w.e.f. 1.4.1991.

125. Inserted, ibid.
126. Section 2(13) defines "customs station" as any customs port, customs airport or land customs station'.
127. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1987.
128. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
129. Omitted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
130. Clause (c) omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
131. Inserted by the Finance Act, 1988, w.e.f. 1.4.1989.
132. Relettered by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
133. Substituted for "manufacturing goods" by the Finance Act, 1990, w.e.f. 1.4.1991.
134. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
135. See rule 18BBA(5).
136. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
137. Substituted for "by the assessee in covertible foreign exchange" by the Finance Act, 1990, w.e.f. 1.4.1991.
138. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
139. See rule 18BBA(6) and Form no.10CCAE
140. Substituted by the Finance Act, 1990, w.e.f. 1.4.1991.
141. See rule 18BBA(4) and Form no.10CCAD.
142. Substituted by the Finance Act, 1991, w.e.f. 1.4.1992.
143. Inserted, ibid.
144. Inserted, ibid., w.e.f. 1.4.1991.
145. See rule 18BBA(7) and Form no.10CCAF.
146. Inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1981.
147. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
148. Inserted, ibid.
149. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
150. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
151. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
152. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
153. Substituted, ibid.

154. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
155. Inserted, ibid.
156. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
157. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
158. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
159. See rule 18BBB and form no.10CCB.
160. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
161. Substituted for "income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
162. Inserted by the Finance Act, 1983, w.e.f. 1.4.1984.
163. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1991.
164. See rule 18BBC.
165. Inserted by the Finance Act, 1989, w.e.f. 1.4.1990.
166. Substituted by the Finance Act, 1990, w.e.f. 1.4.1991.
167. See also circular no.58, dated 15.4.1971.
168. Substituted by the Finance (No.2) Act, 1971, w.e.f. 1.4.1972.
169. See also circular no.253 dated 30.4.1979.
170. For guidelines refer Taxmann's Direct Taxes Circulars, 1991 edn., vol.1.
171. Substituted by the Finance Act, 1974, w.e.f. 1.4.1975.
172. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
173. Substituted for "technical services", ibid.
174. Omitted, ibid.
175. Substituted by the Finance Act, 1988, w.e.f. 1.4.1988.
176. Omitted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
177. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
178. Word "also" omitted by the Finance Act, 1991, w.e.f. 1.4.1992.
179. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
180. Substituted by the Finance Act, 1985, w.e.f. 1.4.1988.
181. Substituted by the Finance Act, 1987, w.e.f. 1.4.1988.
182. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.
183. Sub-section (2) omitted by the Finance Act, 1974, w.e.f. 1.4.1975.
184. Inserted by the Finance Act, 1991, w.e.f. 1.4.1992.