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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग-संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 1st June, 1998:—

BILL No. 46 of 1998.

A Bill to amend the Prasar Bharati (Broadcasting Corporation of India)
Act, 1990.

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

1. (1) This Act may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 1998.

(2) The provisions of section 5 shall come into force at once and remaining provisions of this Act shall be deemed to have come into force on the 6th day of May, 1998.

Short title and
commence-
ment.

Substitution of
new section for
section 2.

2. For section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

25 of 1990.

Definitions.

"2. In this Act, unless the context otherwise requires,—

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

(d) "Board" means the Prasar Bharati Board;

(e) "Broadcasting Council" means the Council established under section 14;

(f) "Chairman" means the Chairman of the Corporation appointed under section 4;

(g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "elected Member" means a Member elected under section 3;

(j) "Executive Member" means the Executive Member appointed under section 4;

(k) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(l) "Member" means a Member of the Board;

(m) "Member (Finance)" means the Member (Finance) appointed under section 4;

(n) "Member (Personnel)" means the Member (Personnel) appointed under section 4;

(o) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(p) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(q) "notification" means a notification published in the Official Gazette;

(r) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an *ex officio* Member, the nominated Member or an elected Member;

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- (s) "prescribed" means prescribed by rules made under this Act;
- (t) "Recruitment Board" means a board established under sub-section (1) of section 10;
- (u) "regulations" means regulations made by the Corporation under this Act;
- (v) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;
- (w) "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);
- (x) "year" means the financial year."

3. In section 3 of the principal Act,—

Amendment of section 3.

- (a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The Board shall consist of—

- (a) a Chairman;
- (b) one Executive Member;
- (c) one Member (Finance);
- (d) one Member (Personnel);
- (e) six Part-time Members;
- (f) Director-General (Akashvani), *ex officio*;
- (g) Director-General (Doordarshan), *ex officio*;
- (h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and
- (i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves."

- (b) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote."

4. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment of section 4.

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration."

Substitution of new section for section 6.

5. For section 6 of the principal Act, the following section shall be substituted, namely:—

Term of office, conditions of service, etc., of Chairman and other Members.

“6. (1) The Chairman shall be a part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, the Member (Finance) and the Member (Personnel) shall be whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier:

Provided that any person holding office as a Whole-time Member immediately before the day on which the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 1998 receives the assent of the President shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such assent as such whole-time Member and shall not be entitled to any compensation because of his ceasing to hold such office.

(3) The term of office of Part-time Members shall be six years, but one-third of such Members shall retire on the expiration of every second year:

Provided that every Part-time Member holding office as such, immediately before the day, the Prasar Bharati (Broadcasting Corporation of India) Amendment Act, 1998 receives the assent of the President, shall, notwithstanding anything contained in this sub-section as amended by the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997, retire in accordance with the provisions of sub-section (5):

Ord. 29 of 1997.

Provided further that no such Part-time Member shall be entitled to any compensation for curtailment of the term of his office under sub-section (5).

(4) The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit for curtailing the term of office of some of the Part-time Members then appointed in order that one-third of the Members holding office as such Part-time Members shall retire in every second year thereafter.

(6) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed or elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(7) The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(8) the Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.”

Amendment of section 7.

6. In section 7 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Notwithstanding anything contained in sub-section (1), the

President may, by order, remove the Chairman or any Whole-time Member from his office if such Chairman or such Whole-time Member—

- (a) ceases to be a citizen of India; or
- (b) is adjudged an insolvent; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is convicted of any offence involving moral turpitude; or
- (e) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove any Part-time Member from his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.”

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If the Chairman or any Whole-time Member, except any *ex officio* Member, the Nominated Member or any elected Member, is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or, participates in any way in the profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.”

7. In section 9 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 9.

“(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and employees as may be necessary.”

8. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 10.

“(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:

Provided that for the purposes of appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the *ex officio* Members, the Nominated Member and the elected Members.”

9. In section 11 of the principal Act,—

Amendment of section 11.

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

“(2) The provisions of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such member intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed.”.

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option, in writing, to be governed—

(a) by the scale of pay applicable to the post held by him in the Akashvani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations.

and such option once exercised under this Act shall be final:

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.”.

10. In section 12 of the principal Act,—

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

“(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885.”;

(b) in sub-section (2), for clause (π), the following clause shall be substituted, namely:—

"(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;"

(c) in sub-section (3), for clause (c), the following clause shall be substituted, namely:—

"(c) to negotiate for purchase of, or otherwise, acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;"

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement.";

(e) for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:

Provided that the fees and other service charges levied and collected under this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time."

11. After section 12 of the principal Act, the following sections shall be inserted, namely:—

"13. (1) There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provisions of this Act and, in particular, the objectives set out in section 12 and submit a report thereon to Parliament.

(2) The Committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

14. (1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.

(2) The Broadcasting Council shall consist of—

(i) a President and ten other members to be appointed by the President of India from amongst persons of eminence in public life;

(ii) four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.

(3) The President of the Broadcasting Council shall be a whole-time member and every other member shall be a part-time member and the President or the part-time member shall hold office as such for a term of three years from the date on which he enters upon his office.

Insertion of
new sections
13 to 15.

Parliamentary
Committee.

Establishment
of Broadcast-
ing Council,
term of office
and removal,
etc., of
members
thereof.

(4) The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.

(5) The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

15. (1) The Broadcasting Council shall receive and consider complaints from—

(i) any person or group of persons alleging that a certain programme or broadcast or the functioning of the Corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established;

(ii) any person (other than an officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for the disposal of complaints received by it.

(4) If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Member to take appropriate action.

(5) If the Executive Member is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board for its decision thereon.

(6) If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.

(7) Notwithstanding anything contained in sub-sections (5) and (6), where the Broadcasting Council deems it appropriate, it may, for reasons to be recorded in writing, require the Corporation to broadcast its recommendations with respect to a complaint in such manner as the Council may deem fit."

Application of
and the
procedures to be
followed by
Broadcasting
Council.

Amendment of
section 16.

12. In section 16 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

"(a) all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation;"

13. For section 25 of the principal Act, the following section shall be substituted, namely:—

"25. (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action (including supersession of the Board) which may be taken against the Board.

(2) On the recommendation of the Parliament, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing the notification under this sub-section, the President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall, until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), the President may reconstitute the Board by fresh appointments, and in such a case any person who had vacated his office under clause (a) of sub-section (3) shall not be disqualified for appointment:

Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(5) The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament."

14. After section 25 of the principal Act, the following section shall be inserted, namely:—

"26. It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under section 13 shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament."

15. For sections 27 and 28 of the principal Act, the following sections shall be substituted, namely:—

"27. The Chairman and every other Member, officer or other employee of the Corporation and every member of a Committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder."

Substitution of new section for section 25.

Report to Parliament in certain matters and its recommendations as to action against the Board.

Insertion of new section 26.

Office of member not to disqualify a Member of Parliament.

Substitution of new sections for sections 27 and 28.

Chairman, Members, etc., to be public servants.

Protection of action taken in good faith.

Substitution of
new section for
section 31.

Annual Report.

16. For section 31 of the principal Act, the following section shall be substituted, namely:—

“31. (1) The Corporation shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

(2) The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

Amendment of
section 32.

17. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

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

(a) the salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (7) of section 6;

(b) the allowances payable to the Chairman and Part-time Members under sub-section (8) of section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under sub-section (1) of section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;

(e) the qualifications and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of section 14;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils, under sub-section (6) of section 14;

(i) the manner in which the Corporation may invest its moneys under section 19;

(j) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 21;

(k) the form in which, and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under section 31;

(l) any other matter which is required to be, or may be, prescribed.”

Amendment of
section 33.

18. In section 33 of the principal Act, in sub-section (2),—

(a) after clause (g), the following clause shall be inserted, namely:—

“(h) the manner in which and the period within which complaints may be made under sub-section (2) of section 15;”;

(ii) clause (h) shall be re-lettered as clause (i).

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STATEMENT OF OBJECTS AND REASONS

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 was brought into force with effect from the 15th September, 1997 through a Government notification dated 22nd July, 1997. However, before constituting the Prasar Bharati Board and notifying the establishment of the Corporation, the Act was substantially amended by the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1997 promulgated on the 29th October, 1997.

2. Before a Bill could be introduced to replace this Ordinance, the Lok Sabha was dissolved on the 4th December, 1997 and the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997 was promulgated on the 26th December, 1997 to continue the changes made by the first Ordinance.

3. The Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997 has since lapsed on 6th May, 1998. It was a conscious decision to allow the Ordinance to lapse, since the Ordinance had removed or modified several important provisions in the principal Act relating to (i) establishment of a Parliamentary Committee to oversee the functions of the Corporation; (ii) establishment of a Broadcasting Council, to determine the quality and contents of the programmes being broadcast; (iii) the upper-age limit of 62 years for the CEO; (iv) the retirement of one-third of the members of rotation, which provided for continuity in the functioning of the Board; and (v) the appointment of two full-time Members for Finance and Personnel and replacing them with only part-time ex officio members. The removal or modification of these provisions is considered detrimental to the proper functions of Prasar Bharati as originally envisaged.

4. This lapse of the Ordinance has resulted in a situation where while the Ordinance is no longer in force, a doubt was expressed whether all provisions of the original Act would automatically revive or Parliamentary legislation would be required for that purpose. Government have been advised that specific legislative measures are required to bring into existence the same state of affairs which existed before the promulgation of the Ordinance. While this objective could have been achieved immediately with the promulgation of another Ordinance also, Government have chosen not to do so, and have decided to introduce a Bill to restore the provisions of the original Prasar Bharati (Broadcasting Corporation of India) Act, 1990 in toto.

5. The proposed Bill shall resolve the uncertainty and vacuum created by the lapse of the Ordinance and shall restore to the Prasar Bharati and its operations the accountability and balance which were envisaged by the original Act.

6. The bill seeks to achieve the above objectives.

SUSHMA SWARAJ.

New Delhi;
The 25th of May, 1998

FINANCIAL MEMORANDUM

According to clause 3 of the Bill, the Board of Prasar Bharati shall consist of three whole-time Members i.e. one Executive Member and two other Whole-time Members, one Part-time Chairman, six other Part-time Members, two ex-officio Members, one Nominated Member and two elected representatives of employees. According to sub-clause (7) of clause 5, the Whole-time Members shall be entitled to such salaries and allowances, etc., as may be prescribed. According to clause 8 of the Bill, the Corporation would have one or more Recruitment Boards.

According to clause 11 of the Bill, there will be a Broadcasting Council to receive complaints. The Council shall consist of a President who shall be a whole-time member and ten other part-time members. The expenditure on the Board of Prasar Bharati, the Broadcasting Council and Recruitment Board is estimated to be about Rs. 1.5 crores recurring and Rs. 0.50 crores non-recurring.

2. According to clause 12 of the Bill, all properties and assets including non-lapsable fund are to be transferred to the Corporation. The total value of the assets of Akashvani and Doordarshan has not been assessed and therefore cannot be indicated. The estimated balance in the non-lapsable fund on 1st April, 1998 was Rs. 21.73 crores (provisional).

3. At 1997-98 level of expenditure on Akashvani and Doordarshan, the Central Government is funding them to the extent of Rs. 650.26 crores on Non-Plan Account (net) and Rs. 71.06 crores on Plan Account (net).

4. The Corporation will over a period of time strive to reduce its dependent on Government budgetary support.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 of the Bill seeks to empower the Central Government to make rules for carrying out the provisions of the Act. The matters in respect of which such rules may be made relate, *inter alia*, to the salaries and allowances and conditions of service and other matters relating to the whole-time members, the allowances payable to the Chairman and part-time members, the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees, the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established, the qualifications and other conditions of service of the members of the Recruitment Board and their period of office, the terms and conditions in accordance with which the deputation may be regulated, salary and allowances and conditions of service and other matters in relation to the President of Broadcasting Council, the manner of investment of the Corporation's money, etc.

2. Clause 18 of the Bill seeks to empower the Corporation to make regulations non inconsistent with the act and the rules thereunder for enabling it to perform its functions under the Act. The matters in respect of which such regulations may be made relate to the manner in which and the period within which complaints may be made to the Broadcasting Council.

3. The matters in respect of which rules may be made under clause 17 of the Bill and the matters in respect of which regulation may be made under clause 18 of the Bill are all matters of detail or procedure or matters for which it is not practicable to make provision in the act. Further, the rules and regulations have to be laid before Parliament. Hence, the delegation of legislative power is of a normal character.

THE FINANCE (No. 2) BILL, 1998

ARRANGEMENT OF CLAUSES

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THE SECOND SCHEDULE.
THE THIRD SCHEDULE.
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THE SIXTH SCHEDULE.

BILL NO. 51 OF 1998

A Bill to give effect to the financial proposals of the Central Government for the financial year 1998-99.

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance (No. 2) Act, 1998.

Short title and commencement.

(2) Save as otherwise provided in this Act, sections 2 to 101 (except section 53) shall be deemed to have come into force on the 1st day of April, 1998.

CHAPTER II

RATES OF INCOME-TAX

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

Income-tax.

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

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

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

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

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

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

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be. 43 of 1961,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) "domestic company" means an Indian company, or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 1998, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section or in the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

CHAPTER III DIRECT TAXES

Income-tax

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

Substitution of
new authorities.

TABLE

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

4. In section 2 of the Income-tax Act,—

Amendment
of section 2.

(a) in clause (7A) with effect from the 1st day of October, 1998,—

(i) for the words "Assistant Commissioner or Assistant Director", the words "Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director" shall be substituted;

(ii) for the words "Deputy Commissioner or Deputy Director", the words "Joint Commissioner or Joint Director" shall be substituted;

(b) in clause (9A), after the words "an Assistant Commissioner of Income-tax", the words "or a Deputy Commissioner of Income-tax" shall be inserted with effect from the 1st day of October, 1998;

(c) for clause (11), the following clause shall be substituted with effect from the 1st day of April, 1999, namely:—

'(11) "block of assets" means,—

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed;'

(d) in clause (19A), the words "or an Additional Commissioner of Income-tax" shall be omitted with effect from the 1st day of October, 1998;

(e) in clause (19C), the words "or an Additional Director of Income-tax" shall be omitted with effect from the 1st day of October, 1998;

(f) in clause (24), after sub-clause (xi), the following sub-clause shall be inserted with effect from the 1st day of April, 1999, namely:—

"(xii) value of any movable or immovable property received on or after the 1st day of October, 1998 by any person without consideration in money or money's worth;";

(g) after clause (28B), the following clauses shall be inserted with effect from the 1st day of October, 1998, namely:—

'(28C) "Joint Commissioner" means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117;

(28D) "Joint Director" means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under sub-section (1) of section 117;';

(h) in clause (30), the words, figures and brackets "", and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of sub-section (6) of section 6" shall be omitted with effect from the 1st day of April, 1999.

Amendment
of section 5.

5. In section 5 of the Income-tax Act, in sub-section (1), the proviso shall be omitted with effect from the 1st day of April, 1999.

Amendment
of section 6.

6. In section 6 of the Income-tax Act, sub-section (6) shall be omitted with effect from the 1st day of April, 1999.

7. In section 10 of the Income-tax Act, with effect from the 1st day of April, 1999,—

(a) in clause (3), in the second proviso, after clause (iii), the following clause shall be inserted, namely:—

"(iv) income chargeable under clause (v) of sub-section (2) of section 56;";

(b) clause (5A) shall be omitted;

(c) in clause (6), item (aa) of sub-clause (i) and sub-clauses (via), (vii), (ix) and (x) shall be omitted;

(d) in clause (8A), in the *Explanation*, for clause (i), the following clause shall be substituted, namely:—

"(i) any individual who is not a citizen of India; or";

(e) in clause (8B), in sub-clause (b), for item (i), the following item shall be substituted, namely:—

"(i) the individual is an employee of the consultant referred to in clause (8A) and is not a citizen of India; and";

(f) in clause (15), in sub-clause (iv),—

(i) items (c), (e) and (f) shall be omitted;

(ii) in item (fa), the words, figures and brackets "or to a person who is not ordinarily resident within the meaning of sub-section (6) of section 6" shall be omitted;

(g) clause (18A) shall be omitted;

(h) clauses (22) and (22A) shall be omitted;

(i) in clause (23C), after sub-clause (iia), the following sub-clause shall be inserted, namely:—

"(iiab) any university or other educational institution, hospital or medical institution established by a Central, State or Provincial Act or by a local authority or any society registered under the Societies Registration Act, 1860 or any other corresponding law for the time being in force and which is wholly or substantially financed by the Government; or";

(j) for clause (23G), the following clause shall be substituted, namely:—

"(23G) any income by way of interest of an infrastructure capital fund or an infrastructure capital company from primary investments made by way of long-term finance in any enterprise wholly engaged in the business of developing, maintaining and operating any infrastructure facility and which has been approved by the Central Government on an application made by it, in accordance with the rules made in this behalf and which satisfies the prescribed conditions.

Explanation.—For the purposes of this clause,—

(a) "infrastructure capital company" means such company established to make investments by way of long-term finance in an enterprise wholly engaged in the business of developing, maintaining and operating infrastructure facility;

(b) "infrastructure capital fund" means such fund operating under a trust deed, registered under the provisions of the Registration Act, 1908, established to raise monies by the trustees for investment by way of long-term finance in an enterprise wholly engaged in the business of developing, maintaining and operating infrastructure facility;

(c) "infrastructure facility" means—

(i) a road, highway, bridge, airport, port, rail system, a water supply project, irrigation project, sanitation and sewerage system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions specified in sub-section (4A) of section 80-IA;

(ii) a project for generation or generation and distribution of electricity or any other form of power where such project starts generating power on or after the 1st day of April, 1993;

(iii) a project for providing telecommunication services on or after the 1st day of April, 1995;

(d) "long-term finance" shall have the meaning assigned to it in clause (viii) of sub-section (1) of section 36; ;

(k) in clause (26), after the words, brackets and figures "North-Eastern Areas (Reorganisation) Act, 1971", the words "or in the Ladakh region of the State of Jammu and Kashmir" shall be inserted.

8. In section 16 of the Income-tax Act, for clause (i), the following clause shall be substituted with effect from the 1st day of April, 1999, namely:—

Amendment of section 16.

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

(a) does not exceed one lakh rupees, a deduction of a sum equal to thirty-three and one-third per cent. of the salary or twenty-five thousand rupees, whichever is less;

(b) exceeds one lakh rupees but does not exceed five lakh rupees, a deduction of a sum of twenty thousand rupees.

21 of 1860

16 of 1908.

81 of 1971.

Explanation.—For the purposes of this clause, where salary is due from, or paid or allowed by, more than one employer, the deduction under this clause shall be computed with reference to the aggregate salary due, paid or allowed to the assessee and shall in no case exceed the amount specified under this clause;”.

Amendment
of section 17.

9. In section 17 of the Income-tax Act, in clause (2), in the proviso, in clause (v), for the words “ten thousand rupees”, the words “fifteen thousand rupees” shall be substituted with effect from the 1st day of April, 1999.

Amendment
of section 24.

10. In section 24 of the Income-tax Act, with effect from the 1st day of April, 1999,—

(a) in sub-section (1), in clause (i), for the word “one-fifth”, the word “one-fourth” shall be substituted;

(b) in the proviso to sub-section (2), for the word “fifteen”, the word “thirty” shall be substituted.

Amendment
of section 32.

11. In section 32 of the Income-tax Act, in sub-section (1),—

(a) for the opening portion beginning with the words “In respect of depreciation of buildings, machinery, plant or furniture owned, wholly or partly,” and ending with the words and figures “section 34, be allowed—”, the following shall be substituted with effect from the 1st day of April, 1999, namely:—

“In respect of depreciation of—

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—”;

(b) in the fourth proviso, for the words “plant or furniture”, the words “plant or furniture, being tangible asset or know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets” shall be substituted with effect from the 1st day of April, 1999;

(c) after *Explanation 2*, the following *Explanations* shall be inserted with effect from the 1st day of April, 1999, namely:—

“*Explanation 3.*—For the purposes of this sub-section, the expressions “assets” and “block of assets” shall mean—

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature.

Explanation 4.—For the purposes of this sub-section, the expression “know-how” means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto);

(d) after clause (ii), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1998, namely:—

(iii) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purposes of this clause,—

(1) “moneys payable” in respect of any building, machinery, plant or furniture includes—

(a) any insurance, salvage or compensation moneys payable in respect thereof;

(b) where the building, machinery, plant or furniture is sold, the price for which it is sold,

so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (1) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(2) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company;

(e) in the fourth proviso, after the words "referred to in", the words, brackets and figures "clause (xiii) and clause (xiv) of section 47 or" shall be inserted with effect from the 1st day of April, 1999.

12. After section 33AB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1999, namely:—

Insertion of
new section
33ABA.

'33ABA. (1) Where an assessee is carrying on business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business, has before the end of the previous year—

Site
Restoration
Fund.

(a) deposited with the State Bank of India any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas; or

(b) deposited any amount in an account (hereafter in this section referred to as the Site Restoration Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Ministry referred to in clause (a) (hereafter in this section referred to as the deposit scheme),

the assessee shall, subject to the provisions of this section, be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of—

(i) a sum equal to the amount or the aggregate of the amounts so deposited; or

(ii) a sum equal to twenty per cent. of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),

whichever is less:

Provided that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner or, as the case may be, any member of such firm, association of persons or body of individuals:

Provided further that where any deduction, in respect of any amount deposited in the special account, or in the Site Restoration Account, has been allowed under this sub-section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(2) The deduction under sub-section (1) shall not be admissible unless the accounts of such business of the assessee 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:

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

(3) Any amount standing to the credit of the assessee in the special account or the Site Restoration Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme or in the circumstances specified below:—

- (a) closure of business;
- (b) death of an assessee;
- (c) partition of a Hindu undivided family;
- (d) dissolution of a firm;
- (e) liquidation of a company.

(4) Notwithstanding anything contained in sub-section (3), no deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

- (a) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;
- (b) any office appliances (not being computers);
- (c) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;
- (d) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

(5) Where any amount, standing to the credit of the assessee in the special account or in the Site Restoration Account, is withdrawn during any previous year by the assessee in the circumstance specified in clause (a) or clause (d) of sub-section (3), the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.

(6) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme or the deposit scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(7) Where any amount, standing to the credit of the assessee in the special account or in the Site Restoration Account, which is released during any previous year by the State Bank of India or which is withdrawn by the assessee from the Site Restoration Account for being utilised by the assessee for the purposes of such business in accordance with the scheme or the deposit scheme is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year.

Provided that this sub-section shall not apply in a case where such amount is released during any previous year at the closure of the account in circumstances specified in clauses (b), (c) and (e) of sub-section (3).

(8) Where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to

income-tax as the income of that previous year;

Provided that nothing in this sub-section shall apply—

(i) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956; or

(ii) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme or the deposit scheme continues to apply to the company in the manner applicable to the firm.

Explanation.—The provisions of clause (ii) of the proviso shall apply only where—

(i) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company;

(ii) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and

(iii) all the shareholders of the company were partners of the firm immediately before the succession.

(9) The Central Government may, if it considers necessary or expedient so to do, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed after such date as may be specified therein.

Explanation.—For the purposes of this section,—

(a) "State Bank of India" means the State Bank of India constituted under the State Bank of India Act, 1955;

(b) the expression "amount standing to the credit of the assessee in the special account or the Site Restoration Account" includes interest accrued to such accounts.

1 of 1956.

23 of 1955.

13. In section 35 of the Income-tax Act, sub-section (2A) shall be omitted with effect from the 1st day of April, 1999.

Amendment of section 35.

14. In section 35A of the Income-tax Act, in sub-section (1), after the words, figures and letters "after the 28th day of February, 1966", the words, figures and letters "but before the 1st day of April, 1998" shall be inserted with effect from the 1st day of April, 1999.

Amendment of section 35.A.

15. In section 35AB of the Income-tax Act, in sub-section (1), for the words "in any previous year", the words, letters and figures "in any previous year relevant to the assessment year commencing on or before the 1st day of April, 1998" shall be substituted with effect from the 1st day of April, 1999.

Amendment of section 35AB.

16. In section 35D of the Income-tax Act, with effect from the 1st day of April, 1999,—

Amendment of section 35.D.

(a) in sub-section (1), the following proviso shall be inserted, namely:—

'Provided that where an assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words "an amount equal to one-tenth of such expenditure for each of the ten successive previous years", the words "an amount equal to one-fifth of such expenditure for each of the five successive previous years" had been substituted.'

(b) in sub-section (3), before the *Explanation*, the following proviso shall be inserted, namely:—

'Provided that where the aggregate amount of expenditure referred to in sub-section (2) is incurred after the 31st day of March, 1998, the provisions of this sub-section shall have effect as if for the words "two and one-half per cent.", the words "five per cent." had been substituted.'

17. In section 37 of the Income-tax Act, after sub-section (1), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

Amendment of section 37.

Explanation.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."

Amendment of
section 41.

18. In section 41 of the Income-tax Act, after sub-section (I), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1998, namely:—

“(2) Where any building, machinery, plant or furniture,—

(a) which is owned by the assessee;

(b) in respect of which depreciation is claimed under clause (i) of sub-section (I) of section 32; and

(c) which was or has been used for the purposes of business,

is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.”.

Amendment of
section 42.

19. Section 42 of the Income-tax Act shall be re-numbered as sub-section (I) thereof and after sub-section (I) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of April, 1999, namely:—

“(2) Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest in such business is transferred in accordance with the agreement referred to in sub-section (I), subject to the provisions of the said agreement and where the proceeds of the transfer (so far as they consist of capital sums)—

(a) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of transfer, shall be allowed in respect of the previous year in which such business or interest, as the case may be, is transferred;

(b) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred in connection with the business or to obtain interest therein and the amount of such expenditure remaining unallowed, shall be chargeable to income-tax as profits and gains of the business in the previous year in which the business or interest therein, whether wholly or partly, had been transferred:

Provided that in a case where the provisions of this clause do not apply, the deduction to be allowed for expenditure incurred remaining unallowed shall be arrived at by subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed.

Explanation.—Where the business or interest in such business is transferred in a previous year in which such business carried on by the assessee is no longer in existence, the provisions of this clause shall apply as if the business is in existence in that previous year:

(c) are not less than the amount of the expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed in respect of the previous year in which the business or interest in such business is transferred or in respect of any subsequent year or years:

Provided that in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the business to the amalgamated company (being an Indian company), the provisions of this sub-section—

(i) shall not apply in the case of the amalgamating company; and

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(ii) shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the business or interest in the business."

20. In section 43 of the Income-tax Act, in clause (I),—

Amendment of section 43.

(a) after Explanation 8, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1994, namely:—

"Explanation 9.—For the removal of doubts, it is hereby declared that where an asset is or has been acquired on or after the 1st day of March, 1994 by an assessee, the actual cost of asset shall be reduced by the amount of duty leviable under the Customs Tariff Act, 1975 and a claim of credit has been made and allowed under the Central Excise Rules, 1944."

51 of 1975.

(b) after Explanation 9, the following Explanation shall be inserted with effect from the 1st day of April, 1999, namely:—

"Explanation 10.—Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee:

Provided that where such subsidy or grant or reimbursement is of such nature that it can not be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee."

21. In section 43B of the Income-tax Act, after clause (c), in the proviso, after the words, brackets and letter "or clause (d)", the words, brackets and letter "or clause (e)" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1997.

Amendment of section 43B.

22. In section 44AA of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 1999,—

Amendment of section 44AA.

(a) for the words "Twenty thousand", at both the places where they occur, the words "one lakh twenty thousand" shall be substituted;

(b) for the words "Five hundred thousand", at both the places where they occur, the words "ten lakhs" shall be substituted.

23. In section 47 of the Income-tax Act,—

Amendment of section 47.

(a) in clause (xi), for the figures, letters and words "31st day of December, 1997", the figures, letters and words "31st day of December, 1998" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1998;

(b) after clause (xii), the following clauses shall be inserted with effect from the 1st day of April, 1999, namely:—

"(xiii) where a firm is succeeded by a company in the business carried on by it as a result of which the firm sells or otherwise transfers any building, machinery, plant, furniture or intangible asset to the company:

Provided that—

(a) all the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company;

(b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession;

(c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and

(d) the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent. of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession;

(xiv) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any building, machinery, plant, furniture or intangible asset to the company:

Provided that—

(a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

(b) the shareholding of the sole proprietor in the company is not less than fifty per cent. of the total voting power in the company and his shareholding continues to so remain as such for a period of five years from the date of the succession; and

(c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

(xv) any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992, in this regard.”

Amendment of section 47A.

24. In section 47A of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 1999, namely:— 15 of 1992.

“(3) Where any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with, the benefit availed by the firm or by the sole proprietor, as the case may be, shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of the proviso to clause (xiii) or the proviso to clause (xiv), as the case may be, are not complied with.”

Amendment of section 48.

25. In section 48 of the Income-tax Act, after the third proviso, the following proviso shall be inserted with effect from the 1st day of April, 1999, namely:—

“Provided also that where the consideration received or accruing in respect of the transfer of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the consideration so adopted or assessed shall be deemed to be the full value of the consideration received or accruing.”

Insertion of new section 50A.

26. After section 50 of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1998, namely:—

Special provision for cost of acquisition in case of depreciable asset.

“50A. Where the capital asset is an asset in respect of which a deduction on account of depreciation under clause (i) of sub-section (1) of section 32 has been obtained by the assessee in any previous year, the provisions of sections 48 and 49 shall apply subject to the modification that the written down value, as defined in clause (6) of section 43, of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.”

Amendment of section 54H.

27. In section 54H of the Income-tax Act, after the figures and letter “54D”, the figures and letters “54EA, 54EB” shall be inserted with effect from the 1st day of April, 1999.

Amendment of section 56.

28. In section 56 of the Income-tax Act, with effect from the 1st day of April, 1999,—

(a) in sub-section (2), after clause (iv), the following clause shall be inserted, namely:—

“(v) income referred to in sub-clause (xii) of clause (24) of section 2:

Provided that in respect of any property—

(a) transferred otherwise than for adequate consideration, the amount by which the value of such property determined in the manner laid down in Schedule III of the Wealth-tax Act, 1957, as on the date of actual receipt exceeds the value of the consideration shall be deemed to be the income in the hands of the transferee; 27 of 1957.

(b) transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferor, the

amount of the consideration which has not passed or is not intended to pass shall be deemed to be income in the hands of the transferee;

(c) received by way of release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the Assessing Officer to have been bonafide shall be deemed to be the income in the hands of the person in whose favour the release has been made;

(d) for which a person who is absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be income of the beneficiary;

(e) by way of an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in property otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount by which such value exceeds the consideration received shall be deemed to be income of the beneficiary.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

(3) The income referred to in clause (v) of sub-section (2) of section 56 shall be computed after excluding—

46 of 1973.

(a) the amounts received from a person resident outside India out of the moneys standing to his credit in a Non-Resident (External) Account in any Bank in India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 and any rules made thereunder.

Explanation.—For the purposes of this clause, “person resident outside India” has the meaning assigned to it in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973;

46 of 1973.

(b) the amounts received from a citizen of India or a person of Indian origin who is not resident in India by any relative of such person in India of convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 and any rules made thereunder;

46 of 1973.

(c) the amounts received from a citizen of India or a person of Indian origin who is not resident in India, by any relative of such person in India of property in the form of any foreign exchange asset as defined in clause (b) of section 115C;

(d) the amount received from an individual who is a Non-Resident Indian, once out of the moneys standing to his credit in an account opened and operated in accordance with the Non-Resident (Non-Repatriable) Rupee Deposit Scheme, 1992;

(e) the amount received from an individual who is a Non-Resident Indian or property in the form of the bonds specified under sub-clause (iid) of clause (15) of section 10;

Provided that where an individual who is a Non-Resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this clause shall apply in respect of the transfer of property referred to in this clause in such subsequent year or any year thereafter.

Explanation.—For the purpose of this clause, the expression “Non-Resident Indian” shall have the meaning assigned to it in clause (e) of section 115C;

(f) the aggregate value of all cash, movable and immovable property not exceeding two lakh rupees received by a person at the time of his marriage;

(g) the movable and immovable property received under a will;

39 of 1925.

(h) the movable and immovable property received in contemplation of death which has the same meaning as in section 191 of the Indian Succession Act, 1925;

(i) the ex-gratia payments given by an employer to any employee by way of bonus, gratuity or pension or to the dependants of a deceased employee, to the extent to which the payment of such bonus, gratuity or pension is proved to the satisfaction of the Assessing Officer as being reasonable, having regard to the circumstances of the case and is made solely in recognition of the services rendered by the employee;

(j) the amounts received for meeting the educational and medical expenses from any relative upon whom the assessee is dependant for support and maintenance, to the extent such amounts are proved to the satisfaction of the Assessing Officer as being reasonable having regard to the circumstances of the case;

(k) the aggregate value of all cash, movable or immovable property for an amount not exceeding thirty thousand rupees received by any person during a financial year.

Amendment of section 69C.

29. In section 69C of the Income-tax Act, the following proviso shall be inserted at the end with effect from the 1st day of April, 1999, namely:—

“Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”.

Insertion of new section 71B.

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

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

Carry forward and set-off of loss from house property.

(i) be set-off against the income from house property assessable for that assessment year; and

(ii) the loss, if any, which has not been set-off wholly, the amount of loss not so set-off shall be carried forward to the following assessment year, not being more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.”.

Amendment of section 72A.

31. In section 72A of the Income-tax Act, after sub-section (3) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of April, 1999, namely:—

“(4) Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, then, notwithstanding anything contained in any other provisions of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowances for depreciation shall apply accordingly.”.

Substitution of new section for sections 80DD and 80DDA.

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

Deduction in respect of maintenance including medical treatment of handicapped dependant.

“80DD. (1) In computing the total income of an assessee who is a resident of India, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the amount—

(a) of expenditure incurred by way of medical treatment (including nursing), training and rehabilitation of a handicapped dependant; or

(b) paid or deposited under any scheme framed in this behalf by the Life Insurance Corporation or Unit Trust of India subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of handicapped dependant,

out of his income chargeable to tax:

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

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

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

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

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

(4) In this section,—

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

(b) "handicapped dependant" means a person who—

(i) is a relative of the individual or, as the case may be, is a member of the Hindu undivided family and is not dependant on any person other than such individual or Hindu undivided family for his support or maintenance; and

(ii) is suffering from a permanent physical disability (including blindness) or is subject to mental retardation, being a permanent physical disability or mental retardation specified in the rules made by the Board for the purposes of this section, which is certified by a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in a Government hospital, and which has the effect of reducing considerably such person's capacity for normal work or engaging in a gainful employment or occupation;

(c) "Life Insurance Corporation" shall have the same meaning as in clause (iii) of sub-section (8) of section 88;

(d) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963.

52 of 1963.

33. In section 80G of the Income-tax Act with effect from the 1st day of April, 1999, namely:—

Amendment
of section
80G.

(a) in sub-section (1), in clause (i), after the word, brackets, figures and letters "sub-clause (iihf)", the words, brackets, figures and letters "or sub-clause (iihg)" shall be inserted;

(b) in sub-section (2), in clause (a), after sub-clause (iihf), the following sub-clause shall be inserted, namely:—

"(iihg) the National Sports Fund to be set up by the Central Government; or".

34. After section 80G of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1998, namely:—

Insertion of
new section
80GG.

Deductions in respect of rents paid.

'80GG. In computing the total income of an assessee, not being an assessee having any income falling within clause (13A) of section 10, there shall be deducted any expenditure incurred by him in excess of ten per cent. of his total income towards payment of rent (by whatever name called) in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence, to the extent to which such excess expenditure does not exceed two thousand rupees per month or twenty-five per cent. of his total income for the year, whichever is less, and subject to such other conditions or limitations as may be prescribed, having regard to the area or place in which such accommodation is situated and other relevant considerations:

Provided that nothing in this section shall apply to an assessee in any case where any residential accommodation is,—

(i) owned by the assessee or by his spouse or minor child or, where such assessee is a member of a Hindu undivided family, at the place where he ordinarily resides or performs duties of his office or employment or carries on his business or profession; or

(ii) owned by the assessee at any other place, being accommodation in the occupation of the assessee, the value of which is to be determined under sub-clause (i) of clause (a) or, as the case may be, clause (b) of sub-section (2) of section 23.

Explanation.—In this section, the expressions "ten per cent. of his total income" and "twenty-five per cent. of his total income" shall mean ten per cent. or twenty-five per cent, as the case may be, of the assessee's total income before allowing deduction for any expenditure under this section.

Insertion of new section 80HHBA

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

Deduction in respect of profits and gains from housing projects in certain cases

'80HHBA. (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is a resident in India includes any profits and gains derived from the execution of a housing project awarded to the assessee on the basis of global tender and such project is aided by the World Bank, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to fifty per cent. thereof.

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

(i) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the housing project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes along with his return of income the report of such audit in the prescribed form duly signed and verified by such accountant;

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

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

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

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

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

Explanation.—For the purposes of this section,—

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

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

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

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

36. In section 80HHD of the Income-tax Act, after sub-section (6), and before the *Explanation*, the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1990, namely:—

Amendment
of section
80HHD

'(7) Where a deduction under sub-section (1) is claimed and allowed in respect of profits derived from the business of a hotel, such part of profits shall not qualify to that extent for deduction for any assessment year under any other provisions of this Chapter under the heading "C.—Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such hotel.'

37. In section 80-IA of the Income-tax Act,—

Amendment
of section
80-IA

(a) in sub-section (1), with effect from the 1st day of April, 1999,—

(i) after the words "basic or cellular", the words "including radio paging and domestic satellite service" shall be inserted;

(ii) after the words "commercial production", the words "or refining" shall be inserted;

(b) in sub-section (2),—

(i) in clause (iii), in the proviso, for the words, figures and letters "ending on the 31st day of March, 1998", the words, figures and letters "ending on the 31st day of March, 2000" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1998;

(ii) in clause (iv), in sub-clause (b),—

(A) for the words, figures and letters "ending on the 31st day of March, 1998", the words, figures and letters "ending on the 31st day of March, 2000" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1998;

(B) in the proviso, for the figures "2000", the figures "2003" shall be substituted with effect from the 1st day of April, 1999;

(iii) in sub-clause (c), for the words, figures and letters "ending on the 31st day of March, 1999", the words, figures and letters "ending on the 31st day of March, 2000" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1998;

(c) in sub-section (4C), after the words "basic or cellular", the words "including radio paging and domestic satellite service" shall be inserted with effect from the 1st day of April, 1999;

(d) in sub-section (4E), the following proviso shall be inserted, with effect from the 1st day of

October, 1998, namely:—

“Provided that the provisions of this section shall apply in case of refining of mineral oil where the undertaking begins refining on or after the 1st day of October, 1998.”;

(e) in sub-section (6),—

(i) in clause (vi), after the words “basic or cellular”, the words “including radio paging and domestic satellite service” shall be inserted with effect from the 1st day of April, 1999;

(ii) in clause (viii), after the words “commercial production”, the words “or refining” shall be inserted with effect from the 1st day of October, 1998;

(f) after sub-section (9), the following sub-section shall be inserted and shall deemed to have been inserted with effect from the 1st day of April, 1991, namely:—

“(9A) Where any amount of profits and gains of an industrial undertaking or of a hotel in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading “C.—Deductions in respect of certain incomes”, and shall in no case exceed the profits and gains of the undertaking or hotel, as the case may be.”;

(g) in sub-section (12),—

(i) clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following clause shall be inserted with effect from the 1st day of April, 1999, namely:—

“(a) “domestic satellite” means a satellite owned and operated by an Indian company for providing telecommunication service;”;

(ii) in clause (c), with effect from the 1st day of April, 1999,—

(A) in sub-clause (4), after the words “basic or cellular”, the words “including radio paging and domestic satellite service” shall be inserted;

(B) in sub-clause (6), after the words “commercial production”, the words “or refining” shall be inserted;

(iii) in clause (ca), with effect from the 1st day of April, 1999,—

(A) in sub-clause (i), after the word “port,”, the words “inland waterways and inland ports,” shall be inserted ;

(B) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iv) a housing project approved by the prescribed authority under schemes notified by the Central Government.”.

Insertion of
new section
80JJA.

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

Deduction in
respect of profit
and gains from
business of
collecting and
processing of
bio-degradable
waste.

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

601901

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

Insertion of new section 80JJA A

'80JJA A. (1) Where the gross total income of an assessee, being an Indian company, includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent. of additional wages paid to the new regular workmen employed by the assessee during the previous year.

Deduction in respect of employment of new workmen.

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

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

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

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

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

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

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

(a) a casual workman; or

(b) a workman employed through contract labour; or

(c) any other workman employed for a period of less than three hundred days during the previous year;

11 of 1948

(iii) "wages" means the minimum rate of wages fixed under section 3 of the Minimum Wages Act, 1948;

14 of 1947

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

40. In section 80P of the Income-tax Act, in sub-section (2), in clause (c), with effect from the 1st day of April, 1999,—

Amendment of section 80P

(a) in sub-clause (i), for the words "forty thousand rupees", the words "one hundred thousand rupees" shall be substituted;

(b) in sub-clause (ii), for the words "twenty thousand rupees", the words "fifty thousand rupees" shall be substituted.

41. In section 116 of the Income-tax Act, after clause (cc), the following clause shall be inserted with effect from the 1st day of October, 1998, namely:—

Amendment of section 116.

'(cca) "Joint Directors of Income-tax or Joint Commissioners of Income-tax";'

42. In section 139 of the Income-tax Act, in sub-section (1), with effect from the 1st day of August, 1998,—

Amendment of section 139.

(a) in the proviso,—

(i) for the word "two", the word "one" shall be substituted;

(ii) after clause (iv), the following clauses shall be inserted, namely:—

'(v) is the holder of the credit card, not being an "add-on" card, issued by any bank or institution; or

(vi) is a member of a club where entrance fee charged is twenty-five thousand rupees or more.'

(b) after *Explanation 3*, the following *Explanation* shall be inserted, namely:—

'*Explanation 4*.—For the purposes of this sub-section, the expression "travel to any foreign country" does not include travel to the neighbouring countries or to such places of pilgrimage as the Board may specify in this behalf by notification in the Official Gazette.'

Amendment of
section 139A.

43. In section 139A of the Income-tax Act, with effect from the 1st day of August, 1998,—

(a) in sub-section (5), in clause (c), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that a person shall quote General Index Register Number till such time Permanent Account Number is not allotted to such person.";

(b) in sub-section (6), after the words "the Permanent Account Number", the words "or the General Index Register Number" shall be inserted;

(c) in sub-section (8),—

(i) in clause (b), after the words "Permanent Account Number", the words "or the General Index Register Number" shall be inserted;

(ii) after clause (c), the following clauses shall be inserted, namely:—

"(d) class or classes of person to whom the provisions of this section shall not apply;

(e) the form in which the person who has not been allotted a Permanent Account Number or who does not have General Index Register Number shall make his declaration.";

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

'(d) "General Index Register Number" means a number given by an Assessing Officer to an assessee in the General Index Register maintained by him and containing the designation and particulars of the ward or circle or range of the Assessing Officer.'

Amendment of
section 143.

44. In section 143 of the Income-tax Act, in sub-section (3), for the words "determine the sum payable by him", the words "determine the sum payable by him or refund of any amount due to him" shall be substituted with effect from the 1st day of October, 1998.

Insertion of
new section
145A.

45. After section 145 of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1986, namely:—

'145A. Notwithstanding anything to the contrary contained in section 145 (as it stood immediately before the 1st day of April, 1995), the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—

Method of accounting in certain cases.

(a) in accordance with the method of accounting regularly employed by the assessee; and

(b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.'

46. In section 158BA of the Income-tax Act, after sub-section (2), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1995, namely:—

Amendment of section 158BA.

Explanation.—For the removal of doubts, it is hereby declared that—

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the income assessed in any regular assessment shall not be included in the block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of every previous year included in the block period."

47. In section 158BB of the Income-tax Act, in sub-section (1), in the *Explanation*, in clause (b), after the words "by whatever name called", the words "to any partner not being a working partner" shall be inserted with effect from the 1st day of April, 1999.

Amendment of section 158BB.

48. In section 158 BE of the Income-tax Act, after sub-section (2), the existing *Explanation* shall be renumbered as *Explanation 1* and after *Explanation 1* as so renumbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1995, namely:—

Amendment of section 158BE.

Explanation 2.—For the removal of doubts, it is hereby declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last *panchnama* drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer."

49. In section 192 of the Income-tax Act, for sub-section (2B), the following sub-section shall be substituted with effect from the 1st day of August, 1998, namely:—

Amendment of section 192.

'(2B) Where an assessee who receives any income chargeable under the head "Salaries" has, in addition, any income chargeable under any other head of income (not being a loss under any such head other than the loss under the head "Income from house property") for the same financial year, he may send to the person responsible for making the payment referred to in sub-section (1) the particulars of—

(a) such other income and of any tax deducted thereon under any other provision of this Chapter;

(b) the loss, if any, under the head "Income from house property,"

in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall take—

- (i) such other income and tax, if any, deducted thereon; and
- (ii) the loss, if any, under the head "Income from house property",

also into account for the purposes of making the deduction under sub-section (1):

Provided that this sub-section shall not in any case have the effect of reducing the tax deductible except where the loss under the head "Income from house property" has been taken into account, from income under the head "Salaries" below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account.

Amendment
of Chapter
XIX-B.

50. In Chapter XIX-B of the Income-tax Act, with effect from the 1st day of October, 1998,—

(a) in section 245N,—

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

'(a) "advance ruling" means—

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant and such determination shall include the determination of any question of law or of fact specified in the application;

(ii) a decision by the Authority in relation to an assessment which is pending before any of the Income-tax authority or the Tribunal in case of an applicant who is a resident in India and such decision shall include the decision on question of law or fact arising out of the orders of assessment in respect of which an application has been made by a resident applicant;'

(ii) for clause (b), the following clause shall be substituted, namely:—

'(b) "applicant" means a non-resident or a resident who is notified in the Official Gazette by the Central Government making an application;'

(b) in section 245R, in sub-section (2), in the proviso, after the words "allow the application", the words "except in the case of a resident applicant" shall be inserted.

Insertion of
new section
246A.

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

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

(a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(b) an order of assessment, re-assessment or re-computation under section 147 or section 150;

(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

Appealable
orders before
Commissioner

- (e) an order made under sub-section (2) or sub-section (3) of section 170;
- (f) an order made under section 171;
- (g) an order made under clause (B) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;
- (i) an order made under section 237;
- (j) an order imposing a penalty under—
- (A) section 221; or
- (B) section 271, section 271A, section 271B, section 271BB, section 272A, section 272AA or section 272B;
- (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1998, or any earlier assessment years;
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
- (l) an order imposing a penalty under sub-section (2) of section 158BFA;
- (m) an order imposing penalty under section 271B or section 271BB;
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;
- (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
- (p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;
- (q) an order imposing a penalty under Chapter XXI;
- (r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

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

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

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

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

Amendment of section 249.

52. In section 249 of the Income-tax Act, with effect from the 1st day of October, 1998,—

(a) in sub-section (1), after the words “verified in the prescribed manner”, the following words, letters, brackets and figures shall be inserted, namely:—

“and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—

(i) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees;

(ii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees;

(iii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one thousand rupees.”;

(b) in sub-section (3) and in the proviso to sub-section (4), the words and brackets “Deputy Commissioner (Appeals) or, as the case may be, the” shall be omitted.

Amendment of section 252.

53. In section 252 of the Income-tax Act,—

(a) in sub-section (2),—

(i) for the words “Central Legal Service”, the words “Indian Legal Service” shall be substituted;

(ii) for the word and figure “Grade I”, the word and figures “Grade II” shall be substituted;

(b) in sub-section (2A), for the words “Commissioner of Income-tax”, the words “Additional Commissioner of Income-tax” shall be substituted.

Amendment of section 253.

54. In section 253 of the Income-tax Act, with effect from the 1st day of October, 1998,—

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

“(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against,—

(a) an order passed by a Deputy Commissioner (Appeals) under sub-section (1) of section 246 on or before the 1st day of October, 1998, or as the case may be, by a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC in respect of search initiated under section 132 or books of account, other documents or any assets, requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(c) an order passed by a Commissioner (Appeals) on or after the 1st day of October, 1998 under any provision of section 246A;

(d) an order passed by a Commissioner under section 263 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director-General or a Director under section 272A.

(2) The Commissioner may, if he objects to—

(a) any order passed on or before the 1st day of October, 1998 by a Deputy Commissioner (Appeals) or an order passed by a Commissioner (Appeals) under section 154 or section 250;

(b) any order passed by a Commissioner (Appeals) on or after the 1st day of October, 1998 under any one of the provisions of sub-section (1) or sub-section (2) of section 246A,

direct the Assessing Officer to appeal to the Appellate Tribunal against the order.”;

(b) in sub-section (4), the words and brackets “Deputy Commissioner (Appeals) or, as the case may be, the” shall be omitted;

(c) for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent. of the assessed income, subject to a maximum of ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) An appeal for stay of demand shall be accompanied by a fee of five hundred rupees.”.

55. In section 254 of the Income-tax Act, in sub-section (2), after the first proviso, the following proviso shall be inserted with effect from the 1st day of October, 1998, namely:—

Amendment of section 254.

“Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees.”.

56. In section 255 of the Income-tax Act, in sub-section (3), for the words “does not exceed one hundred thousand rupees”, the words “does not exceed five hundred thousand rupees” shall be substituted with effect from the 1st day of October, 1998.

Amendment of section 255.

57. In section 256 of the Income-tax Act, in sub-section (1), for the words and figures “an order under section 254”, the words, figures and letters “an order passed on or before the 1st day of October, 1998, under section 254” shall be substituted with effect from the 1st day of October, 1998.

Amendment of section 256

58. In section 257 of the Income-tax Act, for the words and figures “an application made under section 256”, the words, letters and figures “an application made on or before the 1st day of October, 1998 under section 256” shall be substituted with effect from the 1st day of October, 1998.

Amendment of section 257.

Amendment of section 260.

59. In section 260 of the Income-tax Act, after sub-section (J), the following sub-section shall be inserted with effect from the 1st day of October, 1998, namely:—

“(JA) Where the judgment of the High Court in an appeal filed before it is varied or reversed on an appeal, the effect shall be given to the order passed on an appeal by the Supreme Court.”.

Insertion of new sub-heading and sections in Chapter XX.

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

“CC. Appeals to High Court

Appeal to High Court.

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

(2) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal and, where the appeal is made by the assessee, shall be accompanied by a fee of ten thousand rupees and shall be made within sixty days of the date on which the order is communicated to him.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

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

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

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

Case before High Court to be heard by not less than two Judges.

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

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

Amendment of section 261.

61. In section 261 of the Income-tax Act, for the words and figures- “delivered on a reference made under section 256”, the words, letters and figures “delivered on a reference made under section 256 on or before the 1st day of October, 1998 or an appeal made to the High Court after that date” shall be substituted with effect from the 1st day of October, 1998.

Amendment of section 264.

62. In section 264 of the Income-tax Act, after sub-section (5), the following sub-sections shall be inserted with effect from the 1st day of October, 1998, namely:—

“(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision:

Provided that where an order on an application for revision is not passed by the Commissioner within the period mentioned in this sub-section, then, it shall be presumed as if the application for revision has been allowed and all the consequences shall follow accordingly.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in the case of an order which has been passed in consequences of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.”.

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

Substitution of new section for section 271-F.

“271F. If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139, fails to furnish such return on or before the due date, he shall be liable to pay, by way of penalty, a sum of one thousand rupees:

Penalty for failure to furnish return of income.

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

64. In section 272A of the Income-tax Act, in sub-section (2), in the proviso, after the words “in relation to”, the words, figures and letter “a declaration mentioned in section 197A, a certificate as required by section 203 and” shall be inserted with effect from the 1st day of April, 1999.

Amendment of section 272A.

65. In section 285B of the Income-tax Act, for the words “five thousand rupees”, the words “twenty-five thousand rupees” shall be substituted with effect from the 1st day of April, 1999.

Amendment of section 285B.

66. In the First Schedule to the Income-tax Act, in rule 5, in clause (a), for the words “any expenditure or allowance”, the words “any expenditure or allowance including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1989.

Amendment of First Schedule.

67. The following amendments (being consequential in nature) shall be made in the Income-tax Act, namely:—

Consequential amendments.

(a) in sections 119, 154, 177, 189, 267, 271, 271A, 275 and 295, the words and brackets “Deputy Commissioner (Appeals) or the”, wherever they occur, shall be omitted with effect from the 1st day of October, 1998;

(b) in sections 248, 250, 251 and 287, the words and brackets “Deputy Commissioner (Appeals) or, as the case may be, the” shall be omitted with effect from the 1st day of October, 1998.

Wealth-tax

Substitution of new authorities.

68. In the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), save as otherwise expressly provided in the Wealth-tax Act and unless the context otherwise requires, the reference to any authority specified in column (1) of the Table below shall be substituted with effect from the 1st day of October, 1998 by reference to the authority or authorities specified in the corresponding entry in column (2) of the said Table and such consequential changes as the rules of grammar may require shall also be made:

27 of 1957.

TABLE

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

Amendment of section 2.

69. In section 2 of the Wealth-tax Act,—

(a) for clause (ca), the following clause shall be substituted with effect from the 1st day of October, 1998, namely:—

‘(ca) “Assessing Officer” means the Deputy Commissioner of Income-tax or the Assistant Commissioner or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of the Income-tax Act which apply for the purposes of wealth-tax under section 8 of this Act and also the Joint Commissioner who is directed under clause (b) of sub-section (4) of the said section 120 to exercise or perform all or any of the powers and functions conferred on or assigned to the Assessing Officer under that Act;

(b) in clause (ea) with effect from the 1st day of April, 1999,—

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

‘(i) any building or land appurtenant thereto (hereinafter referred to as “house”), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in-trade;

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes.’;

(ii) after clause (vi), in the *Explanation*, in clause (b), in sub-clause (ii), for the words “or any land held by the assessee as stock-in-trade for a period of five years from the date of its acquisition by him”, the words “or any land held by the assessee as stock-in-trade for a period of seven years from the date of its acquisition by him” shall be substituted;

(c) for clause (s), the following clause shall be substituted with effect from the 1st day of October, 1998, namely:—

'(s) the expressions "Chief Commissioner, Director-General, Commissioner, Commissioner (Appeals), Director, Additional Director of Income-tax, Additional Commissioner of Income-tax, Joint Director, Joint Commissioner of Income-tax, Deputy Director, Deputy Commissioner, Assistant Commissioner, Assistant-Director, Income-tax Officer, Inspector of Income-tax and Tax Recovery Officer" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act.'

70. In section 5 of the Wealth-tax Act, for clause (vi), the following clause shall be substituted with effect from the 1st day of April, 1999, namely:—

Amendment of section 5.

"(vi) one house or part of a house or a plot of land not exceeding five hundred square metres in area belonging to an individual or a Hindu undivided family;"

71. In section 6 of the Wealth-tax Act, the words "or resident but not ordinarily resident in India", wherever they occur, shall be omitted with effect from the 1st day of April, 1999.

Amendment of section 6.

72. After section 23 of the Wealth-tax Act, the following section shall be inserted with effect from the 1st day of October, 1998, namely:—

Insertion of new section 23A.

'23A. (1) Any person—

Appealable orders before Commissioner (Appeals).

(a) objecting to the amount of net wealth determined under this Act; or

(b) objecting to the amount of wealth-tax determined as payable by him under this Act; or

(c) denying his liability to be assessed under this Act; or

(d) objecting to any penalty imposed by the Assessing Officer under section 18 or section 18A; or

(e) objecting to any order of the Assessing Officer under sub-section (2) of section 20; or

(f) objecting to any penalty imposed by the Assessing Officer under the provisions of section 221 of the Income-tax Act as applied under section 32 for the purposes of wealth-tax; or

(g) objecting to any order made by the Assessing Officer under section 22 treating him as the agent of a person residing outside India; or

(h) objecting to any order of the Assessing Officer under section 35 having the effect of enhancing the assessment or reducing a refund or refusing to allow the claim made by the assessee under the said section; or

(i) objecting to any order of the Valuation Officer under section 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said section; or

(j) objecting to any penalty imposed by the Deputy Director or Deputy Commissioner under section 18A.

may appeal to the Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner and on payment of a fee of two hundred and fifty rupees.

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

(2) Notwithstanding anything contained in sub-section (1) of section 23, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeals or matter from the stage on which it was on that day:

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

Explanation.—For the purposes of this sub-section, "appointed day" means the day appointed under section 246A of the Income-tax Act.

(3) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to or the day on which any order objected to is communicated to him, but the Commissioner (Appeals) may admit an appeal after the expiration of the period aforesaid, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(4) Where a return has been filed by an assessee, no appeal under this section shall be admitted unless at the time of filing of the appeal, he has paid the tax due on the net wealth returned by him.

(5) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing.

(6) If the valuation of any asset is objected to in an appeal under clause (a) or clause (i) of sub-section (1) the Commissioner (Appeals) shall,—

(a) in case where such valuation has been made by a Valuation Officer under section 16A, give such Valuation Officer an opportunity of being heard;

(b) in any other case on request being made in this behalf by the Assessing Officer, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the Assessing Officer.

(7) The Commissioner (Appeal) may,—

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(b) before disposing of any appeal, make such further enquiry as he thinks fit or cause further enquiry to be made by the Assessing Officer or, as the case may be, by the Valuation Officer.

(8) In disposing of an appeal, the Commissioner (Appeals) may pass such order as he thinks fit which may include an order enhancing the assessment or penalty:

Provided that no order enhancing the assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(9) In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not placed before the Commissioner (Appeals) by the appellant.

(10) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determining the decision thereon and reasons for the decision.

(11) A copy of every order passed by the Commissioner (Appeals) under this section shall be forwarded to the appellant and the Chief Commissioner or Commissioner."

Amendment of section 24.

73. In section 24 of the Wealth-tax Act, with effect from the 1st day of October, 1998,—

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

"(1) An assessee objecting to an order passed by the Commissioner (Appeals) under sub-section (10) of section 23A may appeal to the Appellate Tribunal within thirty days of the date on which the order is communicated to him.";

(b) in sub-section (2), for the words, figures and brackets "a Deputy Commissioner (Appeals) or a Commissioner (Appeals) under section 23", the words, figures, brackets and letter "a Commissioner (Appeals) under sub-section (10) of section 23A" shall be substituted;

(c) in sub-section (2A), the words and brackets "the Deputy Commissioner (Appeals) or", at both the places where they occur, shall be omitted.

Amendment of section 25.

74. In section 25 of the Wealth-tax Act, with effect from the 1st day of October, 1998,—

(a) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) On every application made by an assessee for revision under sub-section (1), an order shall be passed by the Commissioner within one year from the end of financial year in which such application is made by the assessee for revision:

Provided that where an order on an application for revision is not passed by the Commissioner within the period mentioned in this sub-section, then, it shall be presumed as if the application for revision has been allowed and all the consequences shall follow, accordingly.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 39 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Notwithstanding anything contained in sub-section (3) or sub-section (3A), an order in revision under sub-section (1) or sub-section (2) may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of Appellate Tribunal, the High Court or the Supreme Court.”.

75. After section 27 of the Wealth-tax Act, the following section shall be inserted with effect from the 1st day of October, 1998, namely:—

Insertion of new section 27A.

“27A. (1) The assessee or the Chief Commissioner or Commissioner may, within sixty days of the day upon which he is served with notice of an order under section 24 or section 26 or clause (e) of sub-section (1) of section 35 file on or after the 1st day of October, 1998, an appeal to the High Court.

Appeal to High Court.

(2) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, under sub-section (1) of section 24 only if the High Court is satisfied that the case involves a substantial question of law.

(3) In an appeal under this section, the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal, and, where the appeal is made by the assessee, shall be accompanied by a fee of five thousand rupees.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

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

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

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

76. In section 28 of the Wealth-tax Act, for the words and figures “under section 27”, the words, figures and letter “under section 27 or an appeal filed before the High Court under section 27A” shall be substituted with effect from the 1st day of October, 1998.

Amendment of section 28.

77. In section 29 of the Wealth-tax Act, with effect from the 1st day of October, 1998,—

Amendment of section 29.

(a) in sub-section (1), for the words and figures “under section 27”, the words, figures and letter “under section 27 or an appeal filed under section 27A” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where the judgement of the High Court in an appeal filed before it is varied or reversed on appeal, the effect shall be given to the order passed on appeal by the Supreme Court.”.

Gift-tax

Amendment of section 3. 78. In the Gift-tax Act, 1958 (hereinafter referred to as the Gift-tax Act), in section 3, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of October, 1998, namely:— 18 of 1958.

"(3) Notwithstanding anything contained in sub-section (2), the provisions of this Act shall cease to apply and shall have no effect whatsoever in respect of any gift made on or after the 1st day of October, 1998."

Application of the provisions of the Wealth-tax. 79. (1) The provisions of sections 23, 24, 25, 28 and 29 of the Wealth-tax Act as amended and section 27A as inserted, by the Finance (No.2) Act, 1998, shall apply with necessary modification as if the said provisions were referred to in the Gift-tax Act instead of the Wealth-tax Act.

(2) The Wealth-tax authorities as substituted by section 68 of the Finance (No.2) Act, 1998 shall be deemed to be the Gift-tax authorities for the purposes of the Gift-tax Act.

Interest-tax

Amendment of section 3. 80. In section 3 of the Interest-tax Act, 1974 (hereinafter referred to as the Interest-tax Act), in sub-section (3), with effect from the 1st day of October, 1998,— 45 of 1974.

(a) after the words "Assistant Commissioner", the words "or Deputy Commissioner" shall be inserted;

(b) for the words "Deputy Commissioner", the words "Joint Commissioner" shall be substituted

Amendment of section 15. 81. In section 15 of the Interest-tax Act, for sub-section (2), the following sub-section shall be substituted with effect from the 1st day of October, 1998, namely:

"(2) Every appeal filed on or after the 1st day of October, 1998 shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred and fifty rupees."

Amendment of section 16. 82. In section 16 of the Interest-tax Act, in sub-section (6), for the words "two hundred rupees", occurring at the end, the words, figures and letters "one thousand rupees in the case of an appeal filed on or after the 1st day of October, 1998" shall be substituted.

Amendment of section 20. 83. In section 20 of the Interest-tax Act, after sub-section (5), the following sub-sections shall be inserted with effect from the 1st day of October, 1998, namely:—

"(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision:

Provided that where an order on an application for revision is not passed by the Commissioner within the period mentioned in this sub-section, then, it shall be presumed as if the application for revision has been allowed and all the consequences shall follow, accordingly.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 21 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in the case of an order which has been passed in consequences of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court."

Expenditure-tax

Amendment of section 3. 84. In the Expenditure-tax Act, 1987 (hereinafter referred to as the Expenditure-tax Act), in section 3, in sub-section (1), for the words "one thousand two hundred rupees", the words "two thousand rupees" shall be substituted with effect from the 1st day of October, 1998. 35 of 1987.

Amendment of section 6. 85. In section 6 of the Expenditure-tax Act, with effect from the 1st day of October, 1998,—

(a) in sub-section (1), after the words "Additional Commissioner of Income-tax", the words "Joint Director of Income-tax, Joint Commissioner of Income-tax" shall be inserted;

(b) in sub-section (3), for the words "Deputy Commissioner", the words "Joint Commissioner" shall be substituted.

86. In section 21 of the Expenditure-tax Act, after sub-section (5), the following sub-sections shall be inserted with effect from the 1st day of October, 1998, namely:—

Amendment
of section 21.

"(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision:

Provided that where an order on an application for revision is not passed by the Commissioner within the period mentioned in this sub-section, then, it shall be presumed as if the application for revision has been allowed and all the consequences shall follow accordingly.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 24 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(7) Notwithstanding anything contained in sub-section (6), an order in revision under that sub-section may be passed at any time in the case of an order which has been passed in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court."

87. In section 22 of the Expenditure-tax Act, for sub-section (2), the following sub-section shall be substituted with effect from the 1st day of October, 1998, namely:—

Amendment
of section 22.

"(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner and in respect of appeals filed on or after the 1st day of October, 1998, shall be accompanied by a fee of two hundred and fifty rupees."

88. In section 23 of the Expenditure-tax Act, in sub-section (6), for the words occurring at the end "a fee of two hundred rupees", the words, letters and figures "a fee of one thousand rupees in the case of appeals filed on or after the 1st day of October, 1998" shall be substituted with effect from the 1st day of October, 1998.

Amendment
of section 23.

CHAPTER IV

KAR VIVAD SAMADHAN SCHEME, 1998

89. (1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.

Short title and
commencement.

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

90. In this Scheme, unless the context otherwise requires,—

Definitions.

(a) "declarant" means a person making a declaration under section 91;

(b) "designated authority" means,—

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

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

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

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

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

(f) "disputed tax" means the total tax determined and payable under the direct tax enactment as reduced by tax paid by the assessee or the declarant or any person, as the case may be;

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

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

27 of 1957.
18 of 1958.
43 of 1961.
45 of 1974.
35 of 1987.

(i) "disputed value of gift", in relation to an assessment year, means the whole or so much of the value of gift as is relatable to the disputed tax;

(j) "indirect tax enactment" means the Customs Act, 1962 or the Central Excise Act, 1944 or the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 or the relevant Act;

52 of 1962.
1 of 1944.
51 of 1975.
5 of 1986.

(k) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

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

(vi) a local authority,

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

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

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

52 of 1962.

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

52 of 1962

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

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

(m) "tax arrear" means,—

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined and payable under that enactment but remaining unpaid as on the 31st day of March, 1998;

(ii) in relation to indirect tax enactment, duties, cesses, interest, fine or penalty due or payable under that enactment but remaining unpaid as on the 31st day of March, 1998 or is the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 under such enactment but does not include demands relating to erroneous refunds;

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

Settlement of
tax payable

91. Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 92 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:—

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- 43 of 1961. (a) where the tax arrear is payable under the Income-tax Act, 1961,—
- (i) in the case of a declarant, being a company or a firm, at the rate of thirty-five per cent. of the disputed income;
 - (ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent. of the disputed income;
 - (iii) in the case where tax arrear includes income-tax, interest payable or penalty levied, at the rate of thirty-five per cent. of the disputed income for the persons referred to in clause (i) or thirty per cent. of the disputed income for the persons referred to in clause (ii);
 - (iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
 - (v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of the Income-tax Act, 1961,—
- 43 of 1961. (A) in the case of a declarant, being a company or a firm, at the rate of forty-five per cent. of the disputed income;
- (B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent. of the disputed income;
- 27 of 1957. (b) where the tax arrear is payable under the Wealth-tax Act, 1957,—
- (i) at the rate of one per cent. of the disputed wealth;
 - (ii) in the case where tax arrear includes wealth-tax, interest or penalty levied, at the rate of one per cent. of the disputed wealth;
 - (iii) in the case where tax arrear includes only interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
 - (iv) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 37A or section 37B of the Wealth-tax Act, at the rate of two per cent. of the disputed wealth;
- 18 of 1958. (c) where the tax arrear is payable under the Gift tax Act, 1958,—
- (i) at the rate of thirty per cent. of the disputed value of the gift;
 - (ii) in the case where the tax arrear includes gift-tax, interest payable thereon or penalty levied, at the rate of thirty per cent. of the tax arrear;
 - (iii) where the tax arrear includes only the interest payable or the penalty levied, at the rate of fifty per cent. of the tax arrear;
- 35 of 1987. (d) where the tax arrear is payable under the Expenditure-tax Act, 1987,—
- (i) at the rate of ten per cent. of the disputed chargeable expenditure;
 - (ii) in the case where the tax arrear includes the disputed expenditure-tax, interest payable thereon and penalty levied, at the rate of ten per cent. of the disputed chargeable expenditure;
 - (iii) in the case where the tax arrear comprises only the interest payable or penalty levied, at the rate of fifty per cent. of the tax arrear;
- 45 of 1974. (e) where the tax arrear is payable under the Interest-tax Act, 1974,—
- (i) at the rate of two per cent. of the disputed chargeable interest;
 - (ii) in the case where tax arrear includes the interest payable thereon or penalty levied, at the rate of two per cent. of the tax arrear;
 - (iii) in the case where tax arrear comprises only the interest or penalty levied, at the rate of fifty per cent. of the tax arrear;

(f) where the tax arrear is payable under the indirect tax enactment, at the rate of fifty per cent. of the tax arrear.

Particulars to be furnished in declaration.

92. A declaration under section 91 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

Time and manner of payment of tax arrear.

93. (1) Within sixty days from the date of receipt of the declaration under section 91, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination:

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

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

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

(4) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority or tribunal or court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn:

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

Immunity from prosecution and imposition of penalty in certain cases

94. The designated authority shall, subject to the conditions provided in section 93, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 91.

Appellate authority not to proceed in certain cases.

95. No appellate authority shall proceed to decide any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made under section 93 by the designated authority or the payment of the sum determined under that section.

No refund of amount paid under the Scheme.

96. Any amount paid in pursuance of a declaration made under section 91 shall not be refundable under any circumstances.

Removal of doubts.

97. For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 93, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than those in relation to which the declaration has been made.

Scheme not to apply in certain cases.

98. The provisions of this Scheme shall not apply—

(i) in respect of tax arrear under any direct tax enactment,—

(a) in a case where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 91 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(b) in a case where an order has been passed by the Settlement Commission under any direct tax enactment for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(c) in a case where no appeal or reference or writ petition is pending before any appellate authority or High Court or the Supreme Court or no application for revision is pending before the Commissioner;

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

(a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the date of filing of the declaration under section 91, in respect of any tax arrear in respect of such case under such indirect tax enactment;

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

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Terrorists and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988, or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;

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

Provided that—

(a) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(b) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or

(c) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(d) such order of detention has not been set aside by a court of competent jurisdiction;

(v) to any person notified under sub-section (2) of section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

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

Power of
Central
Government
to issue
directions.

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

(2) Without prejudice to the generality of the foregoing power, the Central Government may, if

45 of 1860.
61 of 1985.
28 of 1987.
49 of 1988.

52 of 1974.

27 of 1992.

it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the Central Government is of opinion that it is necessary in the public interest so to do, be published in the prescribed manner.

Power to
remove
difficulties.

100. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

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

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

Power to make
rules.

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

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

(a) the form in which a declaration may be made under section 91 and the manner in which such declaration may be verified;

(b) the form of certificate which may be granted under sub-section (1) of section 93;

(c) the manner in which the orders may be published under sub-section (2) of section 99;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

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

THE SCHEDULE

{See section 90(B)}

1. The Agricultural Produce Cess Act, 1940.
2. The Coffee Act, 1942.
3. The Mica Mines Labour Welfare Fund Act, 1946.
4. The Rubber Act, 1947.
5. The Salt Cess Act, 1953.
6. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
7. The Additional Duties of Excise (Goods of Special Importance) Act, 1957.

8. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958.
9. The Sugar (Special Excise Duty) Act, 1959.
10. The Textiles Committee Act, 1963.
11. The Produce Cess Act, 1966.
12. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
13. The Coal Mines (Conservation and Development) Act, 1974.
14. The Oil Industry (Development) Act, 1974.
15. The Tobacco Cess Act, 1975.
16. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976.
17. The Beedi Workers Welfare Cess Act, 1976.
18. The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.
19. The Sugar Cess Act, 1982.
20. The Jute Manufacturers Cess Act, 1983.
21. The Agricultural and Processed Food Products Export Cess Act, 1985.
22. The Spices Cess Act, 1986.

CHAPTER V

INDIRECT TAXES

Customs

52 of 1962.

102. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 25, after sub-section (3), the following sub-sections shall be inserted, namely:—

Amendment of section 25

“(4) Every notification issued under sub-section (1) shall,—

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.”

103. In section 27 of the Customs Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so renumbered, the following Explanation shall be inserted, namely:—

Amendment of section 27

“Explanation II.— Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.”

Substitution of new sections for sections 53 to 55.

104. In the Customs Act, for sections 53 to 55, the following sections shall be substituted, namely:—

Transit of certain goods without payment of duty.

"53. Subject to the provisions of section 11, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station may be allowed to be so transited without payment of duty.

Transshipment of certain goods without payment of duty.

54. (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment—

(a) to any major port as defined in the Indian Ports Act, 1908, or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or 15 of 1908.

(b) to any other customs station and the proper officer is satisfied that the goods are bonafide intended for transshipment to such customs station,

the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Liability of duty on goods transited under section 53 or transhipped under section 54.

55. Where any goods are allowed to be transited under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods."

Insertion of new Chapter XIV.

105. In the Customs Act, after Chapter XIV, the following Chapter shall be inserted, namely:—

'CHAPTER XIV A

SETTLEMENT OF CASES

Definitions.

127A. In this Chapter, unless the context otherwise requires,—

(a) "Bench" means a Bench of the Settlement Commission;

(b) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of section 127B is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

(c) "Chairman" means the Chairman of the Settlement Commission;

(d) "Commissioner (Investigation)" means an officer of the customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes, of this Chapter;

(e) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(f) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under section 32 of the Central Excise Act, 1944; and

(g) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

127B. (1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, at any stage of a case relating to him make an application in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods, to the Settlement Commission to have the case settled and such application shall be disposed of in the manner hereinafter provided:

Application
for
settlement of
cases.

Provided that no such application shall be made unless—

(a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of goods, as the case may be, or a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds two lakh rupees;

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any Court:

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed :

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975.

(2) Where any dutiable goods, books of account, other documents or any sale proceeds of the goods have been seized under section 110, the applicant shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be specified by rules.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

127C. (1) On receipt of an application under section 127B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Procedure
on receipt of
application
under
section
127B

Provided that an application shall not be rejected under this sub-section, unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner of Customs shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Customs has no objection to such application; but he may raise objections at the time of hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Customs within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the Bench extends the said period of two months, after recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall, within thirty days of the

receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(4) If the Settlement Commission is satisfied, on an application made under sub-section (1) that the applicant is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments, if the applicant furnishes adequate security for the payment thereof.

(5) Where the additional amount of customs duty referred to in sub-section (3) is not paid by the applicant within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent. per annum or at the rate notified by the Board from time to time on the amount remaining unpaid, be recovered as the sum due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section 142.

(6) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Customs having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Customs received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs or the Commissioner (Investigation) under sub-section (1) or sub-section (6);

1 of 1944.

1 of 1944.

(8) Subject to the provisions of section 32A of the Central Excise Act, 1944, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of section 32D of the Central Excise Act, 1944 shall apply.

(9) Every order passed under sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under sub-section (7) is not paid by the applicant within thirty days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the applicant shall be liable to pay simple interest at the rate of eighteen per cent. per annum or at such other rate as notified by the Board on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and proper officer may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

127D. (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in such manner as may be specified by rules.

Power of
Settlement
Commission to
order
provisional
attachment to
protect revenue.

427 425

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

127E. If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Power of Settlement Commission to report completed proceedings

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B.

1 of 1944. 127F. (1) In addition to the powers conferred on the Settlement Commission under Chapter V of the Central Excise Act, 1944, it shall have all the powers which are vested in an officer of the customs under this Act or the rules made thereunder.

Power and procedure of Settlement Commission.

1 of 1944. (2) Where an application made under section 127B has been allowed to be proceeded with under section 127C, the Settlement Commission shall, until an order is passed under sub-section (7) of section 127C, have, subject to the provisions of sub-section (6) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer as the case may be, under this Act or in the Central Excise Act, 1944, as the case may be, in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matter other than those before the Settlement Commission.

1 of 1944. (4) The Settlement Commission shall, subject to the provisions of Chapter V of the Central Excise Act, 1944 and this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

127G. No person shall be entitled to inspect, or obtain copies of, any report made by any officer of the Customs to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fee as may be specified by rules:

Inspection, etc. of reports.

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment by such person of such fee as may be specified by rules, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

45 of 1860. 127H. (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest under this Act, with respect to the case covered by the settlement:

Power of Settlement Commission to grant immunity from prosecution and penalty.

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (7)

of section 127C within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars, material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

Power of Settlement Commission to send a case back to the proper officer.

127-I. (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 127B has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the proper officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 127B had been made.

(2) For the purpose of sub-section (1), the proper officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such proper officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 28 and for the purposes of interest under section 28AA, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 127B and ending with the date of receipt by the officer of customs of the order of the Settlement Commission sending the case back to the officer of customs shall be excluded.

Order of settlement to be conclusive.

127J. Every order of settlement passed under sub-section (7) of section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

Recovery of sums due under order of settlement.

127K. Any sum specified in an order of settlement passed under sub-section (7) of section 127C may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions of section 142, by the proper officer having jurisdiction over the applicant.

Bar on subsequent application for settlement in certain cases.

127L. Where,—

(i) an order of settlement passed under sub-section (7) of section 127C provides for the imposition of a penalty on the applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement under said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the proper officer by the Settlement Commission under section 127-I,

then such person shall not be entitled to apply for settlement under section 127B in relation to any other matter.

Proceedings before Settlement Commission to be judicial proceedings.

127M. Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code.

45 of 1860.

127N. The provisions of Chapter V of the Central Excise Act, 1944 in so far as it is not inconsistent with the provisions of this Chapter shall apply in relation to proceedings before the

1 of 1944.

Settlement Commission under this Chapter."

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

Additional
duty of
customs
(motor spirit).

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

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

107. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act),—

Amendment
of Act 51 of
1975.

(a) after section 3, the following section shall be inserted, namely:—

"3A. (1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India:

Special
additional
duty.

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent. of the value of the article imported into India.

Explanation.— In this sub-section, the expression "maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India" means the maximum sales-tax, local tax, other charges for the time being in force, which shall be leviable on a like article, if sold or purchased in India, or if a like article is not so sold or purchased which shall be leviable on the class or description of articles to which the imported article belongs.

(2) For the purpose of calculating under this section the special additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 or section 3 of this Act, be the aggregate of—

52 of 1962.

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be;

52 of 1962.

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the special additional duty referred to in sub-section (1); and

52 of 1962.

(iii) the additional duty of customs chargeable on that article under section 3 of this Act.

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

52 of 1962.

(4) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, but excluding drawback, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

(5) Nothing contained in this section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957."

58 of 1957.

(b) the First Schedule shall be amended in the manner specified in the Third Schedule.

Excise

Amendment of section 4A. 108. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 4A, for *Explanation 1*, the following *Explanation* shall be substituted, namely:—

Explanation 1.— For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

Amendment of section 5A. 109. In the Central Excise Act, in section 5A, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) Every notification issued under sub-section (1) shall,—

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963. 54 of 1963.

(c) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force."

Amendment of section 9. 110. In the Central Excise Act, in section 9, in sub-section (1), after clause (bbb), the following clause shall be inserted, namely:—

"(bbb) contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;"

Amendment of section 11B. 111. In the Central Excise Act, in section 11B, in the Explanation, in clause (B), after sub-clause (ea), the following sub-clause shall be inserted, namely:—

"(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;"

Amendment of section 35B. 112. In the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, in section 35B, in sub-section (1), in the first proviso, after clause (c), the following clause shall be inserted, namely:—

"(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 112 of the Finance (No. 2) Act, 1998;"

Insertion of new Chapter V. 113. In the Central Excise Act, after section 30, the following Chapter shall be inserted, namely:—

CHAPTER V

SETTLEMENT OF CASES

Definitions. 31. In this Chapter, unless the context otherwise requires,—

(a) "assessee" means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;

(b) "Bench" means a Bench of the Settlement Commission;

(c) "case" means any proceeding under this Act or any other Act for the levy, assessment

and collection of excise duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a Central Excise Officer or Central Government on the date on which an application under sub-section (1) of section 32E is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause:

(d) "Chairman" means the Chairman of the Settlement Commission;

(e) "Commissioner (Investigation)" means an officer of the customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;

(f) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(g) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under section 32; and

(h) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

32. (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs and Central Excise Settlement Commission for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962.

Customs and
Central Excise
Settlement
Commission.

52 of 1962

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.

(3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws:

Provided that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a Member of the Settlement Commission, he shall cease to be a member of the said Board.

32A. (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

Jurisdiction
and powers of
Settlement
Commission.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.

(6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench:

Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a

Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.

(8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.

32B. (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

Power of Chairman to transfer cases from one Bench to another.

32C. On the application of the assessee or the Chief Commissioner or Commissioner of Central Excise and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

Decision to be by majority.

32D. If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

Application for settlement of cases.

32E. (1) An assessee may, at any stage of a case relating to him make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification or otherwise of such excisable goods, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,—

(a) the applicant has filed monthly returns showing production, clearance and central excise duty paid in the prescribed manner;

(b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant; and

(c) the additional amount of duty accepted by the applicant in his application exceeds two lakh rupees:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any Court:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985.

5 of 1986.

(2) Where any excisable goods, books of accounts, other documents have been seized under the provisions of this Act or rules made thereunder, the assessee shall not be entitled to make an application under sub-section (1), before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

32F. (1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall call for a report from the Commissioner of Central Excise having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application.

Procedure on receipt of an application under section 32E

Provided that an application shall not be rejected under this sub-section, unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner of Central Excise shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Central Excise has no objection to such application; but he may raise objections at the time of hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Central Excise within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the Bench extends the time, recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall within thirty days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(4) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee that he is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments, if the assessee furnishes adequate security for the payment thereof.

(5) Where the additional amount of duty referred to in sub-section (3) is not paid by the assessee within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent. per annum or at the rate notified by the Central Board of Excise and Customs from time to time on the amount remaining unpaid, be recovered, as the sum due to Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(6) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Central Excise having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (1) or sub-section (6).

(8) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of section 32D shall apply.

(9) Every order passed under sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under sub-section (7) is not paid by the assessee within thirty days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at the rate of eighteen per cent. per annum or at such other rate as notified by the Central Board of Excise and Customs on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

Power of settlement Commission to order provisional attachment to protect revenue.

32G. (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

Power of Settlement Commission to reopen completed proceedings.

32H. If Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 32E was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application.

Powers and procedure of Settlement Commissions.

32I. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

(2) Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section (7) of section 32F, have, subject to the provisions of sub-section (6) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

Inspection, etc., of reports.

32J. No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee:

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

32K. (1) The Settlement Commission may, if it is satisfied that any person who made the

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45 of 1860.

application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest under this Act; with respect to the case covered by the settlement:

Power of Settlement Commission to grant immunity from prosecution and penalty.

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (7) of section 32F within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

32L. (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

Power of Settlement Commission to send a case back to the Central Excise Officer.

(2) For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the Central Excise Officer shall be excluded.

32M. Every order of settlement passed under sub-section (7) of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

Order of settlement to be conclusive.

32N. Any sum specified in an order of settlement passed under sub-section (7) of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E

Recovery of sums due under order of settlement.

32O. Where—

(i) an order of settlement passed under sub-section (7) of section 32F provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement under the said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L,

Bar on subsequent application for settlement in certain cases.

then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

Proceedings before Settlement Commission to be judicial proceedings. Additional duty of excise (motor spirit).

32P. Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code."

45 of 1860.

114. (1) In the case of goods specified in the Second Schedule, being goods manufactured in India, there shall be levied and collected as an additional duty of excise an amount calculated at the rate set forth in the said Schedule.

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

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

(4) The additional duty of excise leviable under sub-section (1) shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States.

Amendment of Act 5 of 1986.

115. The Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act) shall be amended in the manner specified in the Fourth Schedule.

Amendment of Act 58 of 1957.

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

Amendment of Act 40 of 1978.

117. The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 [hereinafter referred to as the Additional Duties of Excise (Textiles and Textile Articles) Act,] shall be amended in the manner specified in the Sixth Schedule.

Amendment of Act 16 of 1955.

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

CHAPTER VI

SERVICE TAX

Amendment of Act 32 of 1994.

119. In the Finance Act, 1994, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,—

(1) for section 65, the following section shall be substituted, namely:—

Definitions.

'65. In this Chapter, unless the context otherwise requires, —

(1) "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

(2) "advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(3) "air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air;

(4) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962;

52 of 1962.

(5) "architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture;

20 of 1972.

(6) "assessee" means a person liable to pay the service tax and includes his agent;

- 54 of 1963
1 of 1956
1 of 1944
52 of 1962.
57 of 1972.
3 of 1930.
4 of 1882.
- (7) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;
- (8) "body corporate" shall have the meaning assigned to it in or under clause (7) of section 2 of the Companies Act, 1956;
- (9) "cab" means a motor cab or maxi cab;
- (10) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;
- (11) "Central Excise Officer" has the meaning assigned to it in clause (b) of section 2 of the Central Excise Act, 1944.
- (12) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;
- (13) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;
- (14) "courier agency" means a commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- (15) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;
- (16) "custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962;
- (17) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972;
- (18) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930;
- (19) "insurer" means any person carrying on the general insurance business in India;
- (20) "interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer;
- (21) "management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation;
- (22) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function;
- (23) "mandap keeper" means a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function;
- (24) "manpower recruitment agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client;

- (25) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services;
- (26) "maxi cab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.
- (27) "mechanised slaughter house" means a commercial concern engaged in the business of slaughtering of animals with the aid of machines;
- (28) "motor cab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.
- (29) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;
- (30) "policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938; 4 of 1938.
- (31) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy; 38 of 1949.
- (32) "practising cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy; 23 of 1959.
- (33) "practising company secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship; 58 of 1980.
- (34) "prescribed" means prescribed by rules made under this Chapter;
- (35) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant;
- (36) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;
- (37) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. 42 of 1956.
- (38) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;
- (39) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. 42 of 1956.
- (40) "security agency" means any commercial concern engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;
- (41) "service tax" means tax leviable under the provisions of this Chapter;
- (42) "ship" means a sea-going vessel and includes a sailing vessel;
- (43) "shipping line" means any person who owns or chartered a ship and includes an enterprise which operates or manages the business of shipping;

(44) "steamer agent" means any person who undertakes, either directly or indirectly,—

(a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or

(b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or

(c) to provide container feeder services for or on behalf of a shipping line;

15 of 1992

(45) "stock-broker" means a stock-broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(46) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

(47) "subscriber" means a person to whom a telephone connection or a pager has been provided by the telegraph authority;

(48) "taxable service" means any service provided,—

(a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(b) to a subscriber, by the telegraph authority in relation to a telephone connection;

(c) to a subscriber, by the telegraph authority in relation to a pager;

(d) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance business;

(e) to a client, by an advertising agency in relation to advertisements in any manner;

(f) to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;

(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;

(h) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;

(i) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;

(j) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations in any manner;

(k) to a client, by a manpower recruitment agency in relation to the recruitment of manpower in any manner;

(l) to a customer, by an air travel agent in relation to the booking of passage for travel by air;

(m) to a client, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer;

(n) to any person, by a tour operator in relation to a tour;

(o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;

(p) to a client, by an architect in his professional capacity in any manner;

(q) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner;

(r) to a client, by a management consultant in connection with the management of any organisation in any manner;

(s) to a client, by a practising chartered accountant in his professional capacity, in any manner;

(t) to a client, by a practising cost accountant in his professional capacity, in any manner;

(u) to a client, by a practising company secretary in his professional capacity, in any manner;

(v) to a client, by a real estate agent in relation to real estate;

(w) to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;

(x) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;

(y) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner;

(z) to a client, by an underwriter in relation to underwriting in any manner;

(za) to any person, by a mechanised slaughter house in relation to the slaughtering of bovine animals;

(49) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act; 13 of 1885.

(50) "tour" means a journey from one place to another irrespective of the distance between such places;

(51) "tourist vehicle" has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.

(52) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a tourist permit granted under the Central Motor Vehicle Rules, 1989;

(53) "underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(54) "underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise; 1 of 1944.

(2) for section 66, the following section shall be substituted, namely:—

Change of
service tax.

"66. (1) On and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (a), (b) and (d) of clause (48) of section 65 and collected in such manner as may be prescribed.

(2) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (48) of section 65 and collected in such manner as may be prescribed. 33 of 1996.

(3) With effect from the date notified under section 88 of the Finance Act, 1997, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (n) and (o) of clause (48) of section 65 26 of 1997.

and collected in such manner as may be prescribed.

(4) With effect from the date notified under section 119 of the Finance (No.2) Act, 1998, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (z) of clause (48) of section 65 and collected in such manner as may be prescribed.

(5) With effect from the date notified under section 119 of the Finance (No. 2) Act, 1998, there shall be levied a service tax at the rate of one thousand rupees per animal on the taxable service referred to in sub-clause (za) of clause (48) of section 65 and collected in such manner as may be prescribed.”;

(3) in section 67,—

- (i) in clause (b), for the word "received", the word "charged" shall be substituted;
- (ii) in clause (c), for the word "received", the word "charged" shall be substituted;
- (iii) clauses (l), (m) and (n) shall be omitted;
- (iv) clauses (o), (p) and (q) shall respectively be relettered as clauses (l), (m) and (n) respectively;
- (v) after clause (n) as so relettered, the following clauses shall be inserted, namely :—
 - "(o) in relation to the service provided by an architect to a client, shall be the gross amount charged by such architect from the client for services rendered in professional capacity in any manner;
 - (p) in relation to the service provided by an interior decorator to a client, shall be the gross amount charged by such decorator from the client for services rendered in relation to planning, design or beautification of spaces in any manner;
 - (q) in relation to the service provided by a management consultant to a client, shall be the gross amount charged by such consultant from the client for services rendered in connection with the management of any organization in any manner;
 - (r) in relation to the service provided by a practising chartered accountant to a client, shall be the gross amount charged by such accountant from the client for services rendered in professional capacity in any manner;
 - (s) in relation to the service provided by a practising cost accountant to a client, shall be the gross amount charged by such accountant from the client for services rendered in professional capacity in any manner;
 - (t) in relation to the service provided by a practising company secretary to a client, shall be the gross amount charged by such secretary from the client for services rendered in professional capacity in any manner;
 - (u) in relation to the service provided by a real estate agent to a client, shall be the gross amount charged by such agent from the client for services rendered in connection with the sale, purchase, leasing or renting of real estate including any advice, consultancy or technical assistance relating to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;
 - (v) in relation to the service provided by a security agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with the security of any property or person, and includes services of investigation, detection or verification of any fact or activity including services of providing security personnel;
 - (w) in relation to the service provided by a credit rating agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with credit rating of any financial obligation, instrument or security in any manner;
 - (x) in relation to the service provided by a market research agency to a client, shall be

the gross amount charged by such agency from the client for services rendered in connection with market research of any product, service or utility in any manner;

(y) in relation to the service provided by an underwriter to a client, shall be the gross amount charged by such underwriter from the client for services rendered in relation to underwriting in any manner.";

(4) for sections 68 to 71, the following sections shall be substituted, namely:—

Payment of
service tax.

*68. (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Registration.

69. Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Central Excise Officer.

Furnishing of
returns.

70. Every person liable to pay the service tax shall furnish or cause to be furnished to the Central Excise Officer, a return in such form and in such manner and at such frequency as may be prescribed.

Assessment.

71. (1) For the purpose of making an assessment under this Chapter, the Central Excise Officer may serve on any person who has furnished a return under section 70, a notice requiring him to produce within such period as may be specified therein, such accounts, documents or other evidence as he may deem necessary for such assessment.

(2) The Central Excise Officer, after considering such accounts, documents or other evidence, if any, obtained under sub-section (1) and after taking into account any relevant material which he has gathered, shall, by an order in writing, assess the value of the taxable service and the amount of service tax payable on the basis of such assessment.;"

(5) in section 72, for clause (a), the following clause shall be substituted, namely:—

"(a) any person fails to make the return under section 70, or";

(6) in section 73,—

(a) for the word "quarter", wherever it occurs, the words "prescribed period" shall be substituted;

(b) for the words, brackets and figures "serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section(2) of section 70 and may proceed to assess or reassess the value of the taxable service, and the provisions of this Chapter shall, so far as may be, apply, as if the notice were a notice issued under that sub-section", the words "serve on the assessee a notice and proceed to assess or reassess the value of the taxable service" shall be substituted;

(7) for sections 75 to 77, the following sections shall be substituted, namely:—

Interest on
delayed
payment of
service tax.

"75. Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at the rate of one and one-half per cent. for every month or part of the month by which such crediting of the tax or any part thereof is delayed.

Penalty for
failure to pay
service tax.

76. Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on that tax in accordance with the provisions of section 75, a penalty which shall not be less than one-hundred rupees but which may extend to two hundred rupees for every day during which such failure continues, so, however, that the penalty under this clause shall not exceed the amount of service tax that he failed to pay.

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77. If a person fails to furnish in due time the return which he is required to furnish under section 70 or the rules made thereunder, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every week or part thereof during which such failure continues.”;

Penalty for failure to furnish prescribed return.

(8) in section 82, for the words “If the Central Excise Officer has reason to believe”, the words “If the Commissioner of Central Excise has reason to believe” shall be substituted;

(9) in section 83, after the figures and letter “11B”, the figures and letters “11BB, 12A” shall be inserted;

(10) sections 87 to 92 shall be omitted;

(11) for section 93, the following section shall be substituted, namely:—

“93. (1) If the Central Government is satisfied that it is necessary in public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

Power to grant exemption from service tax.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.”;

(12) in section 94, for sub-section (2), the following sub-section shall be substituted, namely:—

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

- (a) collection and recovery of service tax under sections 66 and 68;
- (b) the time and manner and the form in which application for registration shall be made under section 69;
- (c) the form, manner and frequency of the returns to be furnished under section 70;
- (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
- (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
- (f) any other matter which by this Chapter is to be or may be prescribed.”.

CHAPTER VII

MISCELLANEOUS

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

Omission of section 37 of Act 28 of 1981.

121. In the Indian Post Office Act, 1898, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the First Schedule, the following Schedule shall be substituted, namely:—

Amendment of Act 6 of 1898.

"THE FIRST SCHEDULE

(See section 7)

INLAND POSTAGE RATES

Letters

For a weight not exceeding twenty grams	Rs. 3.00
For every twenty grams, or fraction thereof, exceeding twenty grams	Rs. 3.00.

Letter-cards

For a letter-card	Rs. 1.50.
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Post cards (not being post cards containing printed communication or competition post cards)

Single	25 paise
Reply	50 paise.

[Post cards containing printed communication (not being competition post cards)]

For a post card	Rs. 1.50.
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Explanation.—A post card shall be deemed to contain a printed communication, if any matter (except the name and address of, and other particulars relating to, the sender and the place and date of despatch) is recorded by printing or by cyclostyling or by any other mechanical process, not being typewriting, on any part of the post card except the right hand half of the address-side thereof.

Competition post cards

For a post card	Rs. 3.00
-----------------	----------

Explanation.—A post card shall be deemed to be a competition post card if it is used in response to any competition organised on or through television, radio, newspaper, magazine or any other media.

Book pattern and sample packets

For the first fifty grams or fraction thereof	Re. 1.00
For every additional fifty grams, or fraction thereof, in excess of fifty grams	Rs. 2.00.

Registered newspapers

For a weight not exceeding fifty grams	15 paise
For a weight exceeding fifty grams but not exceeding one hundred grams	25 paise
For every additional one hundred grams, or fraction thereof, exceeding one hundred grams	10 paise.

In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—

For a weight not exceeding one hundred grams	25 paise
For every additional one hundred grams, or	

fraction thereof, exceeding one hundred grams 10 paise.
Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the Post Office.

Parcels

For a weight not exceeding five hundred grams	Rs. 10.00
For every five hundred grams, or fraction thereof, exceeding five hundred grams	Rs. 10.00."

122. The Finance Act, 1998 is hereby repealed and shall be deemed never to have been enacted. Repeal

Declaration under the Provisional Collection of Taxes Act, 1931

It is hereby declared that it is expedient in the public interest that the provisions of clause 106, clause 107, clause 114, clause 115 and clause 116 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931.

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

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

Rates of income-tax

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

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

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

Paragraph C

In the case of every firm,—

Rate of income-tax

- | | |
|----------------------------------|--------------|
| On the whole of the total income | 35 per cent. |
|----------------------------------|--------------|

Paragraph D

In the case of every local authority,—

Rate of income-tax

- | | |
|----------------------------------|--------------|
| On the whole of the total income | 30 per cent. |
|----------------------------------|--------------|

Paragraph E

In the case of a company,—

Rates of income-tax

- | | |
|---|-----------------------------------|
| I. In the case of a domestic company | 35 per cent. of the total income; |
| II. In the case of a company other than a domestic company,— | |
| (i) on so much of the total income as consists of— | |
| (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of | |

March, 1961 but before the 1st day of April, 1976, or

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

and where such agreement has, in either case, been approved by the Central Government

50 per cent.

(ii) on the balance, if any, of the total income

48 per cent.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

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

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

(B) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(C) on income by way of winnings from horse races	40 per cent.;
(D) on income by way of long-term capital gains	20 per cent.;
(E) on the whole of the other income	30 per cent.;
2. In the case of a company—	
(a) where the company is a domestic company—	
(i) on income by way of interest other than “Interest on Securities”	20 per cent.;
(ii) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(iii) on income by way of winnings from horse races	40 per cent.;
(iv) on any other income	20 per cent.;
(b) where the company is not a domestic company—	
(i) on income by way of winnings from lotteries and crossword puzzles	40 per cent.;
(ii) on income by way of winnings from horse races	40 per cent.;
(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	
(A) where the agreement is made before the 1st day of June, 1997	30 per cent.;
(B) where the agreement is made on or after the 1st day of June, 1997	20 per cent.;
(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy-	
(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976	50 per cent.;
(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997	30 per cent.;
(C) where the agreement is made on or after the 1st day of June, 1997	20 per cent.;
(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976	50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997	30 per cent.;
(C) where the agreement is made on or after the 1st day of June, 1997	20 per cent.;
(vii) on income by way of long-term capital gains	20 per cent.;
(viii) on any other income	48 per cent.;

Explanation.—For the purpose of item 1(b)(i) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

PART III

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

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

Paragraph A

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

Rates of income-tax

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

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

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

Paragraph C

In the case of every firm,—

Rate of income-tax

- | | |
|----------------------------------|--------------|
| On the whole of the total income | 35 per cent. |
|----------------------------------|--------------|

Paragraph D

In the case of every local authority,—

60/60I

Rate of income-tax

On the whole of the total income 30 per cent.

Paragraph E

In the case of a company,—

Rates of income-tax

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

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

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

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

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

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

48 per cent.;

PART IV

[See section 2(10)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

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

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

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

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

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

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

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

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

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

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

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1990, to the extent, if any, such loss has not been set off against the agricul-

tural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1991 or the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1991, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1992, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 1998.

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

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1991, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1992 or the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1992, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997

or the 1st day of April, 1998,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 1999.

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

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

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

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

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

THE SECOND SCHEDULE

[See sections 106(1) and 114(1)]

Item No.	Description of goods	Rate of duty
(1)	(2)	(3)
1	Motor spirit commonly known as petrol	Rupee one per litre

THE THIRD SCHEDULE

[See section 107 (b)]

In the First Schedule to the Customs Tariff Act,-

(1) in Chapter 8, in sub-heading No.0806.20, for the entries in column (4) and column (5), the entries "120%" and "110%" shall respectively be substituted;

(2) in Chapter 13, in sub-heading Nos. 1302.19 and 1302.20, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;

(3) in Chapter 21, in sub-heading No. 2106.90, for the entry in column (4), the entry "185%" shall be substituted;

(4) in Chapter 22, in sub-heading Nos. 2207.10, 2208.20, 2208.30, 2208.40, 2208.50, 2208.60, 2208.70 and 2208.90, for the entry in column (4) occurring against each of them, the entry "245%" shall be substituted;

(5) in Chapter 27, in sub-heading No.2709.00, for the entry in column (4), the entry "20%" shall be substituted;

(6) in Chapter 29,-

(i) in sub-heading No. 2905.11, for the entry in column (4), the entry "30%" shall be substituted;

(ii) in sub-heading No. 2918.14, for the entry in column (4), the entry "40%" shall be substituted;

(iii) in sub-heading No. 2933.71, for the entries in column (4) and column (5), the entries "25%" and "15%" shall respectively be substituted;

(7) in Chapter 33, in sub-heading No. 3302.10, for the entry in column (4), the entry "185%" shall be substituted;

(8) in Chapter 37, in sub-heading Nos. 3707.10 and 3707.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(9) in Chapter 38, in the sub-heading No. 3818.00, for the entry in column (4), the entry "20%" shall be substituted;

(10) in Chapter 44,-

(i) in sub-heading Nos. 4404.10, 4404.20, 4405.00, 4406.10, 4406.90, 4407.10, 4407.24, 4407.25, 4407.26, 4407.29, 4407.91, 4407.92 and 4407.99, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(ii) in sub-heading Nos. 4410.11, 4410.19, 4410.90, 4411.11, 4411.19, 4411.21, 4411.29, 4411.31, 4411.39, 4411.91 and 4411.99, for the entry in column (4) occurring against each of them, the entry "40%" shall be substituted;

(11) in Chapter 48, in sub-heading Nos. 4802.10, 4802.20, 4802.30, 4802.40, 4802.51, 4802.52, 4802.53, 4802.60, 4803.00, 4804.11, 4804.19, 4804.21, 4804.29, 4804.31, 4804.39, 4804.41, 4804.42, 4804.49, 4804.51, 4804.52, 4804.59, 4805.10, 4805.21, 4805.22, 4805.23, 4805.29, 4805.30, 4805.40, 4805.50, 4805.60, 4805.70, 4805.80, 4806.10, 4806.20, 4806.30, 4806.40, 4807.10, 4807.90, 4808.10, 4808.20, 4808.30, 4808.90, 4809.10, 4809.20, 4809.90, 4810.11, 4810.12, 4810.21, 4810.29, 4810.31, 4810.32, 4810.39, 4810.91, 4810.99, 4811.10, 4811.21, 4811.29, 4811.31, 4811.39, 4811.40, 4811.90 and 4823.20, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(12) in Chapter 51, in sub-heading Nos. 5105.10, 5105.21, 5105.29, 5105.30 and 5105.40, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(13) in Chapter 69, in sub-heading Nos. 6903.10, 6903.20 and 6903.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(14) in Chapter 74, for the entry in column (4) occurring against all the sub-heading Nos. (except sub-heading Nos. 7401.10, 7401.20, 7402.00, 7403.11, 7403.12, 7403.13, 7403.19, 7403.21, 7403.22, 7403.23, 7403.29 and 7404.00), the entry "35%" shall be substituted;

(15) in Chapter 84,-

(i) in sub-heading Nos. 8407.31, 8407.32, 8407.33, 8407.34, 8408.20, 8409.91 and 8409.99, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading No. 8471.70, for the entry in column (4), the entry "10%" shall be substituted;

(iii) in sub-heading No. 8483.20, for the entry in column (4), the entry "10% plus Rs. 150 per kg." shall be substituted;

(16) in Chapter 85,-

(i) in sub-heading No. 8501.10, for the entry in column (4), the entry "20%" shall be substituted;

(ii) in sub-heading Nos. 8508.10, 8508.20, 8508.80 and 8508.90, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(iii) in sub-heading No. 8532.90, for the entry in column (4), the entry "30%" shall be substituted;

(iv) in sub-heading Nos. 8533.90 and 8541.90, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;

(17) in Chapter 91,—

(i) in sub-heading Nos. 9108.11, 9108.12, 9108.19, 9108.20, 9108.91 and 9108.99, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(ii) in sub-heading Nos. 9110.11, 9110.12, 9110.19 and 9110.90, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

THE FOURTH SCHEDULE

(See section 115)

PART I

In the Schedule to the Central Excise Tariff Act,—

(1) in Chapter 4,—

(i) for NOTE 4, the following NOTES shall be substituted, namely :—

'4. Heading No. 04.04 applies, *inter alia*, to butter-milk, curdled milk, cream, yogurt, whey, curd, and products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter or flavoured or containing added fruit or cocoa and includes fats and oils derived from milk (e.g. milkfat, butterfat and butteroil), dehydrated butter and ghee.

5. In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

6. In this Chapter, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.;

(ii) in sub-heading No. 0401.13, for the entry in column (4), the entry "8%" shall be substituted;

(2) in Chapter 9, after NOTE 2, the following NOTES shall be inserted, namely :—

'3. Heading No. 09.03 covers spices, a group of vegetable products (including seeds, etc.), rich in essential oils and aromatic principles, and which, because of their taste, are mainly used as condiments. These products may be whole or in crushed or powdered form. The addition of other substances to spices shall not affect their inclusion in this heading provided the resulting mixtures retain the essential character of spices included in this heading. The heading also includes products commonly known as "masalas".

4. In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

5. In this Chapter, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.;

(3) in Chapter 11, in sub-heading No. 1102.00, for the entry in column (4), the entry "13%" shall be substituted;

(4) in Chapter 16, the following NOTES shall be inserted, namely :—

'1. In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

2. In this Chapter, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.;

(5) in Chapter 17, in sub-heading No. 1704.10, for the entry in column (3), the entry "- Gums, whether or not sugar coated (including chewing gum, bubblegum, and the like)" shall be substituted;

(6) in Chapter 21,—

(i) after NOTE 9, the following NOTE shall be inserted, namely :—

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'10. Sub-heading Nos. 2108.91 and 2108.99 include sweet meats commonly known as 'mithans' or 'mithal' or by any other name. They also include products commonly known as 'namkeens', 'mixtures', 'bhujia', 'chabena' or by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.;

(ii) in sub-heading No. 2101.30, for the entry in column (4), the entry "8%" shall be substituted;

(7) in Chapter 24, -

(i) in sub-heading No. 2403.11, for the entry in column (4), the entry "Rs.68 per thousand" shall be substituted;

(ii) in sub-heading No. 2403.12, for the entry in column (4), the entry "Rs.252 per thousand" shall be substituted;

(iii) in sub-heading No. 2403.13, for the entry in column (4), the entry "Rs.374 per thousand" shall be substituted;

(iv) in sub-heading No. 2403.14, for the entry in column (4), the entry "Rs.612 per thousand" shall be substituted;

(v) in sub-heading No. 2403.15, for the entry in column (4), the entry "Rs 816 per thousand" shall be substituted;

(8) in Chapter 25, in sub-heading Nos. 2504.21 and 2504.31, for the entry in column (4) occurring against each of them, the entry "Rs. 40 per square metre" shall be substituted;

(9) in Chapter 27, in sub-heading Nos. 2710.11, 2710.12, 2710.13 and 2710.19, for the entry in column (4) occurring against each of them, the entry "35%" shall be substituted;

(10) in Chapter 30, in sub-heading No. 3003.20, for the entry in column (4), the entry "8%" shall be substituted;

(11) In Chapter 32, in sub-heading No. 3215.10, for the entry in column (4), the entry "18%" shall be substituted;

(12) in Chapter 38, in sub-heading No. 3824.20, for the entry in column (4), the entry "Nil" shall be substituted;

(13) in Chapter 39, in sub-heading Nos. 3903.20, 3903.30, 3905.10, 3905.20, 3905.90, 3906.10, 3906.20, 3906.90, 3907.10, 3907.20, 3907.30, 3907.40, 3907.50, 3907.60, 3907.70, 3907.80, 3907.91, 3907.99, 3908.10, 3908.90, 3909.10, 3909.20, 3909.30, 3909.40, 3909.51, 3909.52, 3909.59, 3909.60, 3910.00, 3911.10, 3911.20, 3911.90, 3912.11, 3912.12, 3912.20, 3912.31, 3912.39, 3912.90, 3913.10, 3913.20, 3913.30, 3913.90 and 3914.00, for the entry in column (4) occurring against each of them, the entry "18%" shall be substituted;

(14) in Chapter 40, in sub-heading No. 4012.90, for the entry in column (4), the entry "30%" shall be substituted;

(15) in Chapter 48,—

(i) for NOTE 3, the following NOTE shall be substituted, namely:—

'3. For the purposes of this Chapter, "newsprint" means newsprint as defined by the Central Government by notification published in the Official Gazette.;

(ii) in sub-heading No. 4819.19, for the entry in column (4), the entry "13%" shall be substituted;

(16) in Chapter 51, in sub-heading No. 5106.11, for the entry in column (4), the entry "8%" shall be substituted ;

(17) in Chapter 54, in sub-heading Nos. 5402.10, 5402.31, 5402.41, 5402.51 and 5402.61, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(18) in Chapter 64,—

(i) in NOTE 2, after clause (b), the following clause shall be inserted, namely: -

'(c) the expression "retail sale price" has the meaning assigned to it in section 4A of the Central Excise Act, 1944 (1 of 1944).';

(ii) in sub-heading No. 6401.12, for the entry in column (3), the entry "- - Of retail sale price not exceeding Ra. 125 per pair" shall be substituted;

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(19) in Chapter 69, after NOTE 2, the following NOTE shall be inserted, namely :—

'3. In relation to products of heading Nos. 69.06, 69.07, 69.09, 69.10 and 69.11, the process of printing, decorating or ornamenting shall amount to "manufacture".';

(20) in Chapter 70, after NOTE 5, the following NOTE shall be inserted, namely:—

'6. In relation to products of heading Nos. 70.06, 70.07, 70.08, 70.10, 70.13 and 70.15, the process of printing, decorating or ornamenting shall amount to "manufacture".';

(21) in Chapter 82, in sub-heading No. 8215.00, for the entry in column (4), the entry "8%" shall be substituted;

(22) in Chapter 84, in sub-heading Nos. 8434.10 and 8434.90, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted;

(23) in Chapter 85,—

(i) after NOTE 6, the following NOTE shall be inserted, namely :—

'7. For the purposes of this Chapter, the expression "retail sale price" has the meaning assigned to it in section 4A of the Central Excise Act, 1944 (1 of 1944).';

(ii) in sub-heading No. 8523.12, for the entry in column (4), the entry "13%" shall be substituted;

(iii) in sub-heading No. 8524.20, for the entry in column (3), the entry "- Software" shall be substituted;

(iv) in sub-heading No. 8524.32, for the entry in column (4), the entry "Nil" shall be substituted;

(v) in heading No. 85.24, sub-heading No. 8524.35 and the entries relating thereto shall be omitted;

(vi) in heading No. 85.27, sub-heading No. 8527.20 and the entries relating thereto shall be omitted;

(vii) in sub-heading No. 8539.10, for the entry in column (3), the entry "- Vacuum and gas filled bulbs of retail sale price not exceeding Rs. 20 per bulb" shall be substituted;

(24) in Chapter 87,—

(i) in sub-heading No. 8781.10, for the entry in column (4), the entry "8%" shall be substituted;

(ii) in sub-heading No. 8782.10, for the entry in column (4), the entry "30%" shall be substituted;

(iii) in sub-heading No. 8784.10, for the entry in column (4), the entry "8%" shall be substituted;

(iv) in sub-heading No. 8786.21, for the entry in column (4), the entry "30%" shall be substituted;

(25) in Chapter 90,—

(i) in sub-heading Nos. 9001.10, 9003.11 and 9005.10, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted;

(ii) in sub-heading No. 9004.10, for the entry in column (4), the entry "13%" shall be substituted;

(iii) in sub-heading Nos. 9010.00, 9015.00, 9020.00, 9021.90 and 9022.10, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted;

(iv) in sub-heading No. 9002.00, for the entry in column (4), the entry "18%" shall be substituted;

(26) in Chapter 93, in sub-heading Nos. 9302.00, 9303.00, 9304.00, 9305.00, 9306.00 and 9307.00, for the entry in column (4) occurring against each of them, the entry "25%" shall be substituted;

(27) in Chapter 94, in sub-heading No. 9402.10, for the entry in column (4), the entry "13%" shall be substituted;

(28) in Chapter 96, in sub-heading No. 9607.00, for the entry in column (4), the entry "8%" shall be substituted.

PART II

Heading No.	Sub-heading No.	Description of Goods	Rate of duty
(1)	(2)	(3)	(4)

In the Schedule to the Central Excise Tariff Act, —

(a) in Chapter 4,—

(i) in heading No.04.02, for sub-heading No. 0402.10 and the entries relating thereto, the following shall be substituted, namely:—

		“ In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power :	
0402.11	--	Put up in unit containers and bearing a brand name	8%
0402.19	-	Other	Nil”;

(ii) in heading No.04.03, for sub-heading No. 0403.10 and the entries relating thereto, the following shall be substituted, namely:-

		“ In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power :	
0403.11	-	Put up in unit containers and bearing a brand name	8%
0403.19	--	Other	Nil”;

(iii) for heading No. 04.04 and the entries relating thereto, the following shall be substituted, namely :—
“04.04

OTHER DAIRY PRODUCE; EDIBLE PRODUCTS OF ANIMAL ORIGIN, NOT ELSEWHERE SPECIFIED OR INCLUDED

		- Ghee :	
0404.11	-	Put up in unit containers and bearing a brand name	8%
0404.19	--	Other	Nil
0404.90	-	Other	Nil”;

(b) in Chapter 9,—

(i) for heading No. 09.02 and the entries relating thereto, the following shall be substituted, namely :-

“09.02		TEA, INCLUDING TEA BAGS AND TEA WASTE	
0902.10	-	Put up in unit containers and bearing a brand name	8%
0902.90	-	Other	Nil”;

(ii) for heading No. 09.03 and the entries relating thereto, the following shall be substituted, namely :-

“09.03		SPICES	
0903.10	-	Put up in unit containers and bearing a brand name	8%
0903.90	-	Other	Nil”;

(c) in Chapter 16, for heading No. 16.01 and the entries relating thereto, the following shall be substituted, namely :—

“16.01		PREPARATIONS OF MEAT, OF FISH OR OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES, INCLUDING SAUSAGES AND SIMILAR PRODUCTS, EXTRACTS AND JUICES, PREPARED OR PRESERVED FISH AND CAVIAR AND CAVIAR SUBSTITUTES	
1601.10	-	Put up in unit containers and bearing a brand name	8%
1601.90	-	Other	Nil”;

(1)	(2)	(3)	(4)
	(d) in Chapter 19, for heading No. 19.05 and the entries relating thereto, the following shall be substituted, namely :—		
	"19.05	BREAD, PASTRY, CAKES, BISCUITS AND OTHER BAKERS' WARES, WHETHER OR NOT CONTAINING COCOA, COMMUNION WAFERS, EMPTY CACHETS OF A KIND SUITABLE FOR PHARMACEUTICAL USE, SEALING WAFERS, RICE PAPER AND SIMILAR PRODUCTS	
		- Biscuits :	
	1905.11	-- In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power	8%
	1905.19	-- Other	Nil
	1905.20	- Cakes and pastry	8%
		- Waffles and wafers:	
	1905.31	-- coated with chocolate or containing chocolate	18%
	1905.39	- Other	8%
	1905.90	- Other	Nil";

(e) in Chapter 84,—

(i) for heading No. 84.52 and the entries relating thereto, the following shall be substituted, namely:—

	"84.52	SEWING MACHINES, OTHER THAN BOOK-SEWING MACHINES OF HEADING NO. 84.40; FURNITURE, BASES AND COVERS SPECIALLY DESIGNED FOR SEWING MACHINES; SEWING MACHINE NEEDLES	
		- Sewing machines	
	8452.11	-- Hand operated	Nil
	8452.19	-- Other	8%
	8452.20	- Sewing machine needles	Nil
	8452.30	- Furniture bases and covers for sewing machines and parts thereof	Nil
	8452.90	- Other parts of sewing machines	Nil";

(f) in Chapter 85,—

(i) in heading No. 85.24, for sub-heading No. 8524.34 and the entries relating thereto, the following shall be substituted, namely:—

"8524.34	--	Video cassettes	18%";
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(ii) for heading No. 85.28, sub-heading Nos. 8528.10 and 8528.90 and the entries relating thereto, the following heading, sub-headings and the entries shall be substituted, namely:—

	"85.28	TELEVISION RECEIVERS (INCLUDING VIDEO MONITORS AND VIDEO PROJECTORS), WHETHER OR NOT INCORPORATING RADIO BROADCAST RECEIVERS OR SOUND OR VIDEO RECORDING OR REPRODUCING APPARATUS	
	8528.10	Colour television receivers, where-	18%
		(a) the retail sale price is declared on the package at the time of clearance from the factory of production; and	
		(b) the retail sale price declared is the sole consideration for the sale to the ultimate consumer	
		Colour television receivers, other;	

(1)	(2)	(3)	(4)
	8528.21	-- Of screen size upto 36 cm	Rs. 2000 per set
	8528.22	-- Of screen size exceeding 36 cm but not exceeding 54 cm	Rs. 3000 per set
	8528.23	-- Of screen size exceeding 54 cm but not exceeding 68 cm	Rs. 4000 per set
	8528.24	-- Of screen size exceeding 68 cm	Rs. 6000 per set
	8528.90	-- Other	18%".

THE FIFTH SCHEDULE

(See section 116)

In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act,—

(a) in sub-heading No. 2403.11, for the entry in column (4), the entry "Rs. 32 per thousand" shall be substituted;

(b) in sub-heading No. 2403.12, for the entry in column (4), the entry "Rs. 118 per thousand" shall be substituted;

(c) in sub-heading No. 2403.13, for the entry in column (4), the entry "Rs. 176 per thousand" shall be substituted;

(d) in sub-heading No. 2403.14, for the entry in column (4), the entry "Rs. 288 per thousand" shall be substituted;

(e) in sub-heading No. 2403.15, for the entry in column (4), the entry "Rs. 384 per thousand" shall be substituted;

(f) in sub-heading No. 2403.19, for the entry in column (4), the entry "Rs. 470 per thousand" shall be substituted;

(g) in sub-heading Nos. 5902.10, 5902.20 and 5902.90, for the entry in column (4) occurring against each of them, the entry "Rs. 10 per kg" shall be substituted.

THE SIXTH SCHEDULE

(See section 117)

In the Schedule to the Additional Duties of Excise (Textile and Textile Articles) Act, against S.No.2, for the entry in column (2), the following shall be substituted, namely:—

"Wool, that is to say, all goods falling within Chapter 51, other than fabrics of heading Nos. 51.10, 51.11 and 51.12".

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to give effect to the financial proposals of the Central Government for the financial year 1998-99. The notes on clauses explain the various provisions contained in the Bill.

YASHWANT SINHA.

NEW DELHI;
The 1st June, 1998.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 3(2)-B(D)/98, dated the 1st June, 1998 from Shri Yashwant Sinha, Minister of Finance, to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clause (1) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Finance (No. 2) Bill, 1998, to the Lok Sabha and also recommends to the Lok Sabha the consideration of the Bill.

2. The Bill will be introduced in the Lok Sabha immediately after the presentation of the Budget on the 1st June, 1998.

6/1/98

Notes on clauses

Income-tax

Clause 2, read with the First Schedule to the Bill, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 1998-99. Further, it lays down the rates at which tax is to be deducted at source during the financial year 1998-99 from income subject to such deduction under the Income-tax Act; and the rates at which "advance tax" is to be paid, tax is to be deducted at source from income chargeable under the head "Salaries" and tax is to be calculated and charged in special cases for the financial year 1998-99.

Rates of income-tax for the assessment year 1998-99

Part I of the First Schedule to the Bill specifies the rates of income-tax liable to tax for the assessment year 1998-99. These rates are the same as those specified in Part III of the First Schedule to the Finance Act, 1997, for the purposes of deduction of tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 1997-98.

Rates for deduction of tax at source during the financial year 1998-99 from income other than "Salaries"

Part II of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source during the financial year 1998-99 from incomes other than "Salaries". These rates are broadly the same as those specified in Part II of the First Schedule to the Finance Act, 1997, for the purposes of deduction of income-tax at source during the financial year 1997-98.

Rates for deduction of tax at source from "Salaries" computation of "advance tax" and charging of income-tax in special cases during the financial year 1998-99

Part III of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source from "Salaries" and also the rates at which "advance tax" is to be paid and income-tax is to be calculated or charged in special cases for the financial year 1998-99.

Paragraph A of this Part specifies the rates of income-tax in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vi) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of Part III applies. The basic exemption limit is proposed to be raised to Rs.50,000. No other change is proposed in the rate structure.

Paragraph B of this Part specifies the rates of income-tax in the case of every co-operative society. In such cases, the rates of tax will continue to be the same as those specified for the assessment year 1998-99.

Paragraph C of this Part specifies the rate of income-tax in the case of every firm. In such cases, the rate of tax will be 35 per cent.

Paragraph D of this Part specifies the rate of income-tax in the case of every local authority. In such cases, the rate of tax will continue to be the same as that specified for the assessment year 1998-99.

Paragraph E of this Part specifies the rates of income-tax in the case of companies. The rate of tax in the case of domestic companies

will continue to be 35 per cent. and in the case of foreign companies it will be 48 per cent.

Clause 3 seeks to substitute references of Income-tax Authorities for certain existing Income-tax Authorities. The Fifth Central Pay Commission has recommended change of designation of certain income-tax authorities. The proposed amendment seeks to amend references of certain Income-tax authorities specified in the Income-tax Act.

The proposed amendments are consequential in nature.

The proposed amendment will come into effect from 1st October, 1998.

Clause 4 seeks to amend section 2 of the Income-tax Act relating to definitions.

Sub-clauses (b), (d) and (e) seek to amend clauses (9A), (19A) and (19C) which define the authorities "Assistant Commissioner", "Deputy Commissioner" and "Deputy Director", respectively. It is proposed to amend clause (9A) so as to include Deputy Commissioner of income-tax in that clause. It is also proposed to amend clauses (19A) and (19C) so as to omit the reference of Additional Commissioner of Income-tax from those clauses. It is also proposed to include the definition of Joint Commissioner and Joint Director in clauses (28C) and (29D), respectively. Consequential amendments are also proposed in clause (7A).

This amendment will take effect from 1st October, 1998.

Sub-clause (c) proposes to amend definition of block of assets so as to include certain intangible assets within the definition of block of assets.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Sub-clause (f) seeks to amend clause (24) of section 2 so as to bring the value of any movable and immovable property received on or after 1 October, 1998 by any person without consideration in money within the scope of income.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Sub-clause (h) seeks to omit the reference to a person who is not ordinarily resident in India within the meaning of sub-section (6) of section 6. This amendment is consequential to the omission of sub-section (6) of section 6.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 5 seeks to amend section 5 of the Income-tax Act.

The proposed amendment seeks to omit the proviso in sub-section (1) of section 5 which relates to the exclusion of the income which accrues or arises outside India to a person not ordinarily resident in India from the scope of total income in his case. This amendment is consequential to the omission of sub-section (6) of section 6.

This amendment will take effect from 1st April, 1999 and will,

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accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 6 seeks to amend section 6 of the Income-tax Act.

The proposed amendment seeks to omit sub-section (6) thereby omitting the special residential status of 'not ordinarily resident' in India.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 7 seeks to amend section 10 of the Income-tax Act relating to income not included in the total income.

Sub-clause (a) seeks to insert clause (iv) after clause (iii) in the proviso to clause (3) of section 10 so as not to treat income chargeable under clause (v) of sub-section (2) of section 56 as casual income within the meaning of clause 3.

Sub-clause (b) seeks to omit clause (5A) of the said section providing exemption in respect of remuneration received by a non-resident individual who is not a citizen of India and who comes to India in connection with the shooting of a cinematograph film in India.

Sub-clause (c) seeks to omit item (aa) of sub-clause (i) and sub-clauses (via), (vii), (ix) and (x) of clause (6) providing exemption in respect of various perquisites of foreigners employed in India.

Sub-clauses (d) and (e) seek to omit the references to a person not ordinarily resident in India from clauses (8A) and (8B) of the section. This is as a consequence of the omission of residential status "not ordinarily resident in India" from section 6.

Sub-clause (f) seeks to omit items (c), (e) and (f) of sub-clause (iv) of clause (15) providing exemption in respect of interest on moneys borrowed from foreign sources. It also seeks to omit the reference to a person not ordinarily resident in India from item (fa).

Sub-clause (g) seeks to omit clause (18A) providing exemption in respect of ex-gratia payments made by the Central Government consequent on the abolition of privy purse.

Sub-clause (h) seeks to omit clause (22) providing exemption of any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit. Such educational and medical institution can now claim exemption under sections 11 and 12 of the Income-tax Act.

Sub-clause (h) also proposes to omit clause (22A) providing exemption of any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation and existing solely for philanthropic purposes and not for purposes of profit.

Sub-clause (i) proposes to insert a new sub-clause (iiib) in clause (23C) so as to provide that any income received by any university or other educational institution, hospital or medical institution, established by a Central, State or Provincial Act or by a local authority or any society registered under the Societies Registration Act, 1860 or any other corresponding law for the time being in force and which is wholly or substantially financed by the Government will be exempted from the income-tax.

Sub-clause (j) seeks to substitute clause (23G) of section 10.

Clause (23G) of section 10 provides for income-tax exemption on any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company on investments made by way of purchase of shares or long-term finance to an enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfils the conditions specified in sub-section (4A) of section 80-IA.

It is proposed to substitute the existing clause (23G) by a new clause so as to make certain amendments. The definition of "infrastructure capital company" is being amended to mean a company established for making investment by way of long-term finance in an enterprise wholly engaged in developing, maintaining and operating infrastructure facility. The scope of exemption is also proposed to be restricted to include interest income on primary investments only. It is also proposed that the exemption would be in respect of investments in such infrastructure enterprises which are wholly engaged in the business of developing, maintaining and operating any infrastructure facility and which are approved by the Central Government in accordance with rules made in this behalf on an application made by it and which satisfy the prescribed conditions.

Sub-clause (k) proposes to amend clause (26) so as to extend the exemption in the said clause to the Ladakh region of the state of Jammu and Kashmir.

The amendments in sub-clauses (a) to (k) will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 8 seeks to amend section 16 of the Income-tax Act relating to deduction from salaries.

Clause (i) of section 16 of the Income-tax Act provides that in case of an assessee having income from salary, a deduction of a sum equal to thirty-three and one-third per cent. of the salary or twenty thousand rupees, whichever is less, shall be allowed as a deduction from his salary.

The proposed amendment seeks to provide that in case of an assessee having income from salary upto one lakh rupees, a deduction of a sum equal to thirty-three and one-third per cent. of the salary or twenty-five thousand rupees, whichever is less, shall be allowed as a deduction from his salary. An assessee having income from salary which is more than one lakh but less than five lakh rupees will avail deduction of a sum of twenty thousand rupees. The deductions under clause (i) of section 16 will not be available to the assessee having income of more than five lakh rupees from salary.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 9 seeks to amend clause (v) of the proviso to clause (2) of section 17 of the Income-tax Act relating to definition of "perquisite".

Under the existing provision, any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment referred to in clauses (i) and (ii) of the proviso to clause (2) of section 17 of the Income-tax Act to the extent of ten thousand rupees will not be included in the "perquisite" of the employee.

It is proposed to enhance the present limit from ten thousand rupees to fifteen thousand rupees.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 10 seeks to amend section 24 of the Income-tax Act relating to deductions from income from house property.

Sub-clause (a) proposes to allow deductions in respect of repairs and collection of rent from the property equal to one-fourth of the annual value instead of one-fifth of the annual value.

Sub-clause (b) seeks to amend the proviso to sub-section (2) of section 24 of the Income-tax Act relating to deduction in respect of interest on borrowed capital in case of self-occupied property under the head "Income from house property".

It is proposed to enhance the present limit of deduction of fifteen thousand rupees to thirty thousand rupees where the self-occupied house property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital. The amount of interest payable on such capital, to the extent of thirty thousand rupees, will now be deductible from the annual value of the property.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

Clause 11 seeks to amend section 32 of the Income-tax Act relating to depreciation.

Sub-clauses (a) to (c) propose to widen the scope of this section so as to provide that depreciation will also be allowed in respect of intangible assets owned wholly or partly by the assessee and used by such assessee for the purposes of his business or profession. The intangible assets are know-how, patents rights, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible. These intangible assets will form a separate block of assets. As and when any capital expenditure is incurred by an assessee on acquiring such intangible assets, the amount of such expenditure will be added to the block of intangible assets and depreciation will be claimed on the written-down value at the end of the financial year.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Sub-clause (d) seeks to insert clause (iii) in sub-section (1) of section 32 to provide for the manner of computation of depreciation when an asset on which depreciation has been claimed under clause (i) of sub-section (1) of section 32 is sold, discarded, demolished or destroyed in the previous year. The depreciation amount will be the amount by which the money is payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof.

This amendment will take effect retrospectively from 1st April, 1998 and will, accordingly, apply in relation to the assessment year 1998-1999 and subsequent years.

Clause (e) seeks to restrict the deduction in the fourth proviso to sub-section (1) for depreciation of assets in any previous year in the cases of succession in business or profession or in the case of amalgamation of companies, as the case may be, to the deduction admissible at the prescribed rates under the said sub-section. It

also seeks to allow the deduction to the predecessor and the successor or the amalgamating company and the amalgamated company in the same proportion as the number of days for which they used the assets in the business or profession.

It is proposed to amend the fourth proviso to provide that in case of business organisation, the aggregate depreciation allowable to the predecessor and successor shall not exceed, in any previous year, the deduction calculated at the prescribed rate as if the reorganisation has not taken place.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 12 seeks to insert a new section 33ABA in the Income-tax Act relating to Site Restoration Fund.

The new section provides for a deduction in the computation of the taxable profits in the case of an assessee carrying on business of prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business.

Sub-section (1) of this section provides that where the assessee has deposited, during the previous year, any sum with the State Bank of India in a special account maintained by the assessee with that bank in accordance with the scheme approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas (hereinafter referred to as the Site Restoration Account) or deposited any amount in an account opened by the assessee for the purposes specified in a scheme framed by the said Ministry, the assessee shall be entitled to a deduction of—

(a) a sum equal to the sum deposited; or

(b) a sum equal to twenty per cent. of its profits (as computed under the head "Profits and gains of business or profession" before making any deduction under the new section),

whichever is less.

The provisos to sub-section (1) provide that deduction under this section will not be available to an assessee being a partner of a firm or a member of an association of persons or any body of individuals. It is further provided that where any deduction in respect of any amount deposited in the special account or Site Restoration Account has been allowed in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Sub-section (2) provides that deduction under sub-section (1) shall not be admissible unless the accounts of the said business of the assessee for the previous year relevant to the assessment year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes the report of such audit in the prescribed form alongwith the return. It will be sufficient compliance with the provisions of this sub-section if the assessee gets the accounts of the aforesaid business audited under any law and furnishes the further report of the audit required under that law in the prescribed form.

Sub-section (3) provides that any amount standing to the credit in special account or the Site Restoration Account will not be allowed to be withdrawn except for the purposes specified in the scheme or in the deposit scheme or in the circumstances specified in this sub-section.

Sub-section (4) provides that no deduction will be allowed in respect of any amount utilised for the purposes specified in that sub-section.

Sub-section (5) provides that where any amount standing to the credit of the assessee in the special account or the Site Restoration Account is withdrawn during any previous year by the assessee in the event of closure of business or dissolution of a firm, the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.

Sub-section (6) provides that when any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilised by the assessee for any expenditure in connection with such business in accordance with the scheme, such expenditure will not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Sub-section (7) provides that where any amount is released in the previous year by the State Bank of India or is withdrawn from the Site Restoration Account and is not utilised in accordance with the scheme or the deposit scheme, the whole of such amount or the part thereof shall be deemed to be the profits and gains of business and accordingly chargeable to income-tax as income of that previous year. This sub-section will not apply in a case where such amount is released in the event of death of an assessee, partition of a Hindu undivided family or liquidation of a company.

Sub-section (8) provides that where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any previous year by the assessee before the expiry of eight years from the end of the previous year in which such assets were acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year. This sub-section will not apply in certain cases specified in the proviso to this sub-section.

Sub-section (9) provides that the Central Government may, by notification in the Official Gazette, direct that the deduction allowable under this section will not be allowed after such date as may be specified in such notification.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 13 seeks to amend section 35 of the Income-tax Act relating to expenditure on scientific research.

This sub-section (2AB) of section 35 allows weighted deduction of one and one-fourth of the expenditure incurred on scientific research and development by a company carrying on specified research on fulfilment of certain conditions.

It is proposed to amend said sub-section (1) so as to discontinue deductions for scientific research with effect from 1st April, 1999.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 14 seeks to amend section 35A of the Income-tax Act relating to expenditure on acquisition of patent rights or copyrights.

It is proposed to provide that any expenditure of a capital nature incurred before the 1st April, 1998 on the acquisition of patent rights or copyrights used for the purposes of business will qualify for deduction under the said section 35A.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 15 seeks to amend section 35AB of the Income-tax Act relating to expenditure on know-how.

It is proposed to amend sub-section (1) of section 35AB so as to provide that any lump sum consideration paid by the assessee in any previous year relevant to the assessment year commencing on or before 1st April, 1998 for acquiring any know-how for use for the purposes of business, will qualify for a deduction under the said section 35AB.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 16 seeks to amend section 35D of the Income-tax Act relating to amortisation of certain preliminary expenses. Under the existing provisions, deduction of an amount equal to one-tenth of expenditure specified in sub-section (2) of section 35D for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, previous year in which the extension of the industrial undertaking is completed is allowed. The aggregate amount of such expenditure is restricted upto two and one-half per cent. in accordance with the provisions contained in sub-section (3) of section 35D.

It is proposed to amend section 35D so as to allow the deduction of certain preliminary expenses from one-tenth to one-fifth of such preliminary expenses incurred after 31st March, 1998 and such deductions would be allowed in each of the five successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the industrial undertaking is completed. It is also proposed to enhance the ceiling from two and one-half per cent. specified in sub-section (3) to five per cent.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 17 seeks to amend section 37 of the Income-tax Act relating to general expenditure.

It is proposed to insert an Explanation in sub-section (1) of section 37 of the Income-tax Act so as to clarify that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be allowed.

This amendment will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to assessment year 1962-1963 and subsequent years.

Clause 18 seeks to amend section 41 of the Income-tax Act relating to profits chargeable to tax.

It is proposed to insert sub-section (2) in section 41 so as to provide for manner for calculation of the amount which shall be chargeable to income-tax as income of the business of the previous

year in which the money is payable for the building, machinery, plant or furniture referred to in the proposed sub-section (2) of section 41 is sold, discarded, demolished or destroyed.

This amendment will take effect retrospectively from 1st April, 1998 and will, accordingly, apply in relation to the assessment year 1998-99 and subsequent years.

Clause 19 seeks to amend section 42 of the Income-tax Act relating to special provisions for deduction in the case of business for prospecting, etc., for mineral oil.

Under the existing provisions, where the Central Government has entered into an agreement with any person for the association or participation of the Central Government or any person authorised by it in the business of prospecting for or extraction or production of mineral oils, the expenses and allowances in relation to such business as are specified in the agreement are allowed in lieu of or in addition to those admissible under the Income-tax Act and any agreement entered into after 31st March, 1981, may provide also for allowance in lieu of or in addition to depreciation allowance admissible under section 32 of the Income-tax Act.

It is proposed to amend section 42 so as to provide that, subject to the provisions of the agreement entered into by the Central Government, where the business of assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred or any interest therein is transferred, wholly or partly or any interest in such business is transferred in accordance with the aforesaid agreement entered into by the Central Government and the proceeds of the transfer are less than the expenditure incurred remaining unallowed, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer, shall be allowed in respect of the previous year, in which the business or an interest therein has been transferred. Further, where such business or any interest therein is transferred and proceeds of the transfer exceed the amount of expenditure incurred remaining unallowed, the excess amount shall be chargeable to tax as profits and gains of business in the previous year in which such business or interest therein has been transferred. The proposed amendment also provides that no deduction shall be allowed in the previous year in which the business or any interest therein is transferred in case the proceeds of transfer are not less than the expenditure remaining unallowed.

The provisions in relation to transfer of aforesaid business or any interest therein shall not apply in a scheme of amalgamation whereby the business or interest therein is transferred by the amalgamating company to the amalgamated company, the latter being an Indian company.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 20 seeks to amend section 43 of the Income-tax Act relating to definitions of certain terms relevant to income from profits and gains of business or profession.

It is proposed to insert two Explanations in clause (1) of this section which defines the term "actual cost". Explanation 9 seeks to make it clear that in cases where duty leviable under the Customs Tariff Act, 1975 and duty leviable under the Central Excise Rule, 1944 has been paid and has been included in the actual cost of the asset acquired on or after 1st March, 1994, such duty shall be

excluded as and when any credit by way of MODVAT is allowed to the assessee under the Central Excise Rule, 1944. The proposed amendment will take effect retrospectively from 1st April, 1994 and will, accordingly, apply in relation to assessment year 1994-95 and subsequent years.

Explanation 10 seeks to clarify that where the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or State Government or any authority established under any law or by any other person in the form of subsidy, grant or reimbursement (by whatever name called), that so much of the cost as is relatable to such subsidy, grant or reimbursement shall not be included in the actual cost of the asset.

It is also clarified that where the subsidy, grant, etc., is not directly relatable to the asset acquired, then such cost as is proportionate to the assets in respect of such subsidy or grant, etc., shall not be included in the actual cost of the asset.

The proposed amendment will take effect from 1st April, 1999 and will accordingly apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 21 seeks to amend section 43B of the Income-tax Act relating to allowability of certain expenses only on actual payment.

Under the existing provisions, the sums referred to in clauses (a) to (e) of section 43B are allowable as a deduction when such sum is actually paid by the assessee. The first proviso to section 43B provides that the provisions of section 43B shall not apply to any sum referred to in clause (a) or clause (d) or clause (e) if the sum is actually paid on or before the date on which the return of income is due to be furnished under sub-section (1) of section 139 for the previous year in which the liability to pay such sum was incurred.

The proposed amendment seeks to apply the first proviso to section 43B, being any sum payable by the assessee as interest on any term loan from scheduled bank in accordance with the terms and conditions of the agreement governing such loan.

This amendment will take effect retrospectively from 1st April, 1997 and will, accordingly, apply in relation to the assessment year 1997-98 and subsequent years.

Clause 22 seeks to amend section 44AA of the Income-tax Act relating to maintenance of accounts by certain persons carrying on profession or business.

The proposed amendment seeks to amend sub-section (2) of section 44AA so as to provide that the monetary limits of income and total sales, etc., specified in that sub-section, will be increased from forty thousand rupees to one lakh twenty thousand rupees and from five hundred thousand rupees to ten lakh rupees, respectively.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 23 seeks to amend section 47 of the Income-tax Act relating to transactions not regarded as transfer.

Sub-clause (a) seeks to amend clause (xi) of section 47 which provides that transfer by way of exchange of a capital asset being membership of recognised stock exchange for the shares of a company to which such membership is transferred would not be regarded as transfer for the purposes of section 45 and will not

attract capital gains tax if such exchange is effected on or before the 31st December, 1997 and such shares are retained by the transferor for a period of not less than 3 years from the date of transfer.

The proposed amendment seeks to extend the date specified in the said clause (xi) upto 31st December, 1998.

This amendment will take effect retrospectively from 1st April, 1998 and will, accordingly, apply in relation to the assessment year 1998-1999 and subsequent years.

Sub-clause (b) seeks to insert new clauses (xiii), (xiv) and (xv) in section 47 of the Income-tax Act relating to transactions not regarded as transfer.

Under the existing provisions of Income-tax Act, tax on capital gains is leviable in relation to transfer of assets in cases of business reorganisations where a firm or a proprietary concern is succeeded by a company.

The proposed new clause (xiii) provides that nothing contained in section 45 shall apply to transfer of any building, machinery, plant, furniture or intangible asset to the company where a firm is succeeded by a company in the business carried on by it, subject to certain specified conditions. The conditions *inter alia* are that the assets and liabilities of the firm relating to the business immediately before the succession shall become the assets and liabilities of the company. All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession. The partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company. The aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent. of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

The proposed new clause (xiv) provides that nothing contained in section 45 shall apply to transfer of any building, machinery, plant, furniture or intangible asset to the company where a proprietary concern is succeeded by a company in the business carried on by it, subject to certain specified conditions. The conditions *inter alia* are that the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession shall become the assets and liabilities of the company. The shareholding of the sole proprietor in the company is not less than fifty per cent. of the total voting power in the company and shareholding shall continue to so remain for a period of five years from the date of the succession. The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

The proposed new clause (xv) seeks to provide that any transfer involved in a scheme for lending of any securities under an agreement or arrangement subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992, in this regard, which the assessee has entered into with the borrower of such securities, shall not be regarded as transfer in order to attract levy of capital gains tax.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-

2000 and subsequent years.

Clause 24 seeks to amend section 47A of the Income-tax Act relating to withdrawal of exemptions in certain cases.

Under the existing provisions of section 47A, tax on capital gain is attracted on transfer of assets when a firm or proprietary concern is succeeded by a company. However, it is proposed to provide in section 47 that section 45 shall not be applicable in such cases of succession if conditions laid down relating to continuing of business and continuing of ownership are followed.

The proposed sub-section (3) to section 47A provides that if the condition stipulated regarding the succession of proprietary concern or firm by the company whereby capital gain tax is not levied are not complied with, the benefits availed by the sole proprietor or the firm, as the case may be, shall be deemed to be profit and gains of the successor company chargeable to tax in the year in which infringement takes place.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 25 seeks to amend section 48 of the Income-tax Act relating to the mode of computation.

It is proposed to amend section 48 by inserting a fourth proviso. According to the new proviso, in those cases where consideration received or accruing in respect of a transfer of a capital asset, being land or building or both, is less than the value adopted by any authority of a State Government for the purpose of payment of stamp duty, the consideration so adopted shall be the full value of consideration received or accruing for the purpose of charging capital gains tax.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 26 seeks to insert a new section 50A in the Income-tax Act.

It is proposed to make special provision for cost of acquisition in the case of depreciable asset referred to in clause (i) of sub-section (1) of section 32.

The proposed amendment seeks to provide that the provisions of sections 48 and 49 shall apply subject to the modification that the written down value as defined in clause (6) of section (43), of the asset, as adjusted, shall be taken as the cost of acquisition of the asset in respect of which a deduction on account of depreciation under clause (i) of sub-section (1) of section 32 has been obtained by the assessee in any previous year.

This amendment will take effect retrospectively from 1st April, 1998 and will, accordingly, apply in relation to assessment year 1998-1999 and subsequent years.

Clause 27 seeks to amend section 54H of the Income-tax Act relating to extension of time for acquiring new asset or depositing or investing the amount of capital gain in certain cases.

Section 54EA provides that where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period for acquiring the new asset by the assessee referred to in sections 54, 54B and 54D, or, as the case may be, the period available to the

assessee under the said section, for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of transfer, shall be reckoned from the date of receipt of such compensation. Sections 54EA and 54EB were inserted by the Finance (No. 2) Act, 1996. The proposed amendment seeks to insert reference of sections 54EA and 54EB to enable the assessee to acquire the new asset referred to in section 54EA and section 54EB from the date of receipt of compensation referred to in section 54H.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 28 seeks to amend section 56 of the Income-tax Act relating to income from other sources.

It is proposed to insert clause (v) in sub-section (2) of section 56 so that income referred to in sub-clause (xii) of clause (24) of section 2 is chargeable as "income from other sources". This income refers to value of any movable or immovable property received on or after 1st October, 1998 by any person without consideration in money or money's worth.

It is further proposed to include certain amounts for the purpose of clause (v) such as—

(a) where property is transferred otherwise than for adequate consideration.

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other pecuniary claim or of any interest in property by any person;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property; and

(e) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration which is not adequate.

It is also proposed to insert a new sub-section (3) in section 56 which shall provide for certain exclusions from the amounts received as mentioned in clause (v) of sub-section (2). These exclusions are, amounts received from Non-Resident Indians and persons resident outside India, subject to certain conditions as provided, amounts received at the time of marriage, subject to a limit of Rs. 2 lakhs, movable and immovable properties received by will or in contemplation of death, ex-gratia payment given by the employer to the employee, subject to certain conditions as provided, amounts received by a dependent for meeting educational and medical expenses from a relative. Further, all amounts received upto Rs. 30,000/- shall be excluded.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 29 seeks to amend section 69C of the Income-tax Act relating to unexplained expenditure, etc.

It is proposed to add a proviso to section 69C to provide that notwithstanding anything contained in any other provision of the Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 30 seeks to insert a new section 71B in the Income-tax Act.

It is proposed that where the assessee incurs any loss under the head "income from house property" and such loss is not fully adjusted under other heads of income in the same assessment year, then the balance loss shall be allowed to be carried forward and set-off in subsequent years subject to a limit of eight assessment years against income from house property.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 31 seeks to amend section 72A of the Income-tax Act, providing for carry forward and set off of accumulated losses and unabsorbed depreciation in certain cases.

It is proposed to insert sub-section (4) in section 72A to provide that in cases of succession of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 and a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, notwithstanding anything contained in any other provisions of the Income-tax Act the accumulated loss and the unabsorbed depreciation of the predecessor firm or proprietary concern, as the case may be, shall be deemed to be the loss or as the case may be, allowance for depreciation of the successor company for the previous year in which business reorganisation was effected and the other provisions of the Act relating to set off and carry forward loss and allowance for depreciation shall apply accordingly.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

Clause 32 seeks to substitute sections 80DD and 80DDA of the Income-tax Act relating to deduction in respect of medical treatments, etc. of a handicapped dependant and deduction in respect of deposit made for maintenance of a handicapped dependant.

Under the existing provisions of section 80DD, a deduction of Rs. 15,000 is allowed to an individual or Hindu undivided family in respect of expenditure incurred on medical treatment in respect of a handicapped dependant. Section 80DDA allows for a separate deduction to a parent or guardian in respect of deposits made in specified schemes of Life Insurance Corporation or Unit Trust of India.

It is proposed to substitute sections 80DD and 80DDA so as to allow a higher benefit of deduction with a choice to the parent or guardian to spend on either the medical treatment of or for the future needs of such handicapped dependant. It is also proposed to provide an overall limit for amounts of expenditure incurred in

assessee under the said section, for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of transfer, shall be reckoned from the date of receipt of such compensation. Sections 54EA and 54EB were inserted by the Finance (No. 2) Act, 1996. The proposed amendment seeks to insert reference of sections 54EA and 54EB to enable the assessee to acquire the new asset referred to in section 54EA and section 54EB from the date of receipt of compensation referred to in section 54H.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 28 seeks to amend section 56 of the Income-tax Act relating to income from other sources.

It is proposed to insert clause (v) in sub-section (2) of section 56 so that income referred to in sub-clause (xii) of clause (24) of section 2 is chargeable as "income from other sources". This income refers to value of any movable or immovable property received on or after 1st October, 1998 by any person without consideration in money or money's worth.

It is further proposed to include certain amounts for the purpose of clause (v) such as-

(a) where property is transferred otherwise than for adequate consideration;

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property; and

(e) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration which is not adequate.

It is also proposed to insert a new sub-section (3) in section 56 which shall provide for certain exclusions from the amounts received as mentioned in clause (v) of sub section (2). These exclusions are, amounts received from Non-Resident Indians and persons resident outside India, subject to certain conditions as provided, amounts received at the time of marriage, subject to a limit of Rs.2 lakhs, movable and immovable properties received by will or in contemplation of death, ex-gratia payment given by the employer to the employee, subject to certain conditions as provided, amounts received by a dependent for meeting educational and medical expenses from a relative. Further, all amounts received upto Rs. 30,000/- shall be excluded.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 29 seeks to amend section 69C of the Income-tax Act relating to unexplained expenditure, etc.

It is proposed to add a proviso to section 69C to provide that notwithstanding anything contained in any other provision of the Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 30 seeks to insert a new section 71B in the Income-tax Act.

It is proposed that where the assessee incurs any loss under the head "income from house property" and such loss is not fully adjusted under other heads of income in the same assessment year, then the balance loss shall be allowed to be carried forward and set-off in subsequent years subject to a limit of eight assessment years against income from house property.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 31 seeks to amend section 72A of the Income-tax Act, providing for carry forward and set off of accumulated losses and unabsorbed depreciation in certain cases.

It is proposed to insert sub-section (4) in section 72A to provide that in cases of succession of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 and a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, notwithstanding anything contained in any other provisions of the Income-tax Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or proprietary concern, as the case may be, shall be deemed to be the loss or as the case may be, allowance for depreciation of the successor company for the previous year in which business reorganisation was effected and the other provisions of the Act relating to set off and carry forward loss and allowance for depreciation shall apply accordingly.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

Clause 32 seeks to substitute sections 80DD and 80DDA of the Income-tax Act relating to deduction in respect of medical treatments, etc. of a handicapped dependant and deduction in respect of deposit made for maintenance of a handicapped dependant.

Under the existing provisions of section 80DD, a deduction of Rs. 15,000 is allowed to an individual or Hindu undivided family in respect of expenditure incurred on medical treatment in respect of a handicapped dependant. Section 80DDA allows for a separate deduction to a parent or guardian in respect of deposits made in specified schemes of Life Insurance Corporation or Unit Trust of India.

It is proposed to substitute sections 80DD and 80DDA so as to allow a higher benefit of deduction with a choice to the parent or guardian to spend on either the medical treatment of or for the future needs of such handicapped dependant. It is also proposed to provide an overall limit for amounts of expenditure incurred in

maintaining handicapped dependants and on deposits made for maintenance of such dependants, which together would qualify for a specified deduction. The limit in this regard is proposed to be Rs.40,000 in each year.

This amendment will take effect from the 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 33 seeks to amend section 80G of the Income-tax Act.

Section 80G provides for deduction from total income in respect of donations made by an assessee. In respect of donations to certain funds hundred per cent. deduction is allowed.

It is proposed by clauses (a) and (b) to provide hundred per cent. deduction in respect of donations made to National Sports Fund in order to attract donations to this Fund.

This amendment will take effect from 1st April, 1999 and shall, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 34 seeks to insert a new section 80GG in the Income-tax Act.

It is proposed to insert a new section 80GG which provides deduction in respect of rents paid.

It is proposed to insert a new section 80GG to provide a deduction in respect of any expenditure incurred by the assessee in excess of ten per cent of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purpose of his own residence to the extent of two thousand rupees per month or twenty-five per cent of his total income, whichever is less.

This amendment will take effect retrospectively from 1st April, 1998 and will, accordingly, apply in relation to the assessment year 1998-1999 and subsequent years.

Clause 35 seeks to insert a new section 80HHBA in the Income-tax Act relating to deduction in respect of profits and gains towards housing projects in certain cases.

Sub-section (1) of section 80HHBA provides that an Indian company or a non-corporate assessee resident in India will be entitled to a deduction in the computation of the taxable income, of fifty per cent of the profits and gains derived from the business of execution of a housing project aided by World Bank and undertaken by the assessee in pursuance of a contract floated on the basis of a global tender.

Sub-section (2) of section 80HHBA provides that the deduction under this section will be allowed only if the following conditions are satisfied:-

(i) separate accounts are maintained by the assessee in respect of the profits and gains derived from the business of the execution of a housing project aided by the World Bank and undertaken by him on the basis of a global tender. In the case of assessee other than Indian companies and co-operative societies, the accounts are audited by a Chartered Accountant and the assessee furnishes along with his return of income the report of such audit in the prescribed form;

(ii) an amount equal to fifty per cent. of the profits and gains from the business of the housing project is debited to the Profit and Loss Account of the previous year in which the deduction under this section is to be allowed and credited to a

housing project reserve account to be utilized by the assessee during a period of five years for the purposes of business other than for distribution by way of dividends or profit.

Sub-section (3) of section 80HHBA provides that 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 Housing Projects Reserve Account for distribution by way of dividends or profits or for any other non-business purpose, the deduction originally allowed will be deemed to have been wrongly allowed and the Assessing Officer may re-compute the total income of the assessee for the relevant previous year and make the necessary rectification within a period of four years from the end of the previous year in which the money was so utilized.

Sub-section (4) of new section 80HHBA provides that no part of the income payable to the assessee for the execution of a housing project money under sub-section (1) shall be qualified for the deduction for any assessment year under any other provision.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent year.

Clause 36 seeks to amend section 80HHD of the Income-tax Act relating to deduction in respect of earnings in convertible foreign exchange.

It is proposed to insert a new sub-section in section 80HHD so as to provide that where deduction under sub-section (1) of the said section 80HHD is claimed and allowed in respect of profits derived from the business of hotel, such part of profit shall not qualify for deduction for any assessment year under any of the provisions of Chapter VIA, and in no case shall exceed the profits and gains of such hotel.

This amendment will take effect retrospectively from 1st April, 1990 and will, accordingly, apply in relation to the assessment year 1990-91 and subsequent years.

Clause 37 seeks to amend section 80-IA of the Income-tax Act relating to deduction in respect of profits and gains from industrial undertakings in certain cases.

It is proposed to amend sub-section (1) of section 80-IA which provides for a deduction in respect of profits and gains of an assessee from certain industrial undertakings subject to fulfilling certain conditions specified in that section is allowed in computing its total income. It is proposed to extend this deduction now available in respect of telecommunication services to such services rendered through radio-paging and domestic satellite service as well. In the case of domestic satellite service, this deduction will be allowable only to those Indian companies owning and operating such satellite services themselves. It is also proposed to amend the section to extend the deduction now available in respect of commercial production of mineral oils to refining also.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

It is proposed to amend the proviso to sub-clause (b) in clause (iv) of sub-section (2) of section 80-IA which was inserted by the Income-tax (Amendment) Act, 1998. The proposed amendment seeks to provide that the deductions from profits and gains of an industrial undertaking set up in any part of India for the generation, or generation and distribution, of power will be available upto the year 2003 under section 80-IA.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Sub-clauses (b) and (c) of clause (iv) of sub-section (2) of section 80-IA provide the conditions subject to which an industrial undertaking shall be eligible for tax holiday. Under the existing provisions of the aforesaid sub-clauses, tax holiday is available to a small scale industrial undertaking or an industrial undertaking located in an industrially backward State specified in the Eighth Schedule to the Act or in case of an industrial undertaking set up in any part of India for the generation, or generation and distribution of power on the condition that it begins to manufacture or produce articles or things at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 1998. The tax holiday in respect of industrial undertakings located in an industrially backward district of category A or an industrially backward district of category B is available in case such industrial undertaking manufactures or produces articles or things at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, 1999. It is proposed to extend the period of commencement of manufacture or production of articles or things, generation or generation and distribution of power under the aforesaid sub-clause (b) from the 31st day of March, 1998 to 31st day of March, 2000. In cases of industrial undertakings covered under the aforesaid sub-clause (c), it is proposed to extend the period of commencement of manufacture or production of articles or things from the 31st day of March, 1999 to the 31st day of March, 2000.

It is also proposed to make consequential amendment in the proviso to clause (iii) of sub-section (2) so as to bring it in conformity with the amendment proposed in sub-clause (b) of clause (iv) of sub-section (2).

These amendments will take effect from 1st April, 1998.

It is proposed to insert a new sub-section (9A) in section 80-IA so as to provide that where an amount of profits and gains of an industrial undertaking or a hotel, is claimed and allowed under the said section, the profits to that extent shall not qualify for deduction for any assessment year under any other provision of Chapter VIA and in no case shall exceed the eligible profits of the industrial undertakings or hotel, as the case may be.

This amendment will take effect retrospectively from 1st April, 1991 and will, accordingly, apply to the assessment year 1991-92 and subsequent years.

It is also proposed to amend clause (12), sub-clause (ca) of section 80-IA, so as to amend the definition of 'Infrastructure facility' to include Housing projects and inland port and waterways in addition to bridge, airport, port, rail system, water-supply project, sanitation and sewerage.

Clause 38 seeks to insert a new section 80JJA in the Income-tax Act so as to provide deductions in respect of profits and gains from business of collecting, processing and treating of bio-degradable waste.

The amendment seeks to provide that where the gross total income of an assessee includes any profits and gains derived from the business of collecting, processing and treating bio-degradable

waste for generating power, producing bio-gas and making pellets, briquettes for fuel and organic manure, there shall be allowed, in computing the total income of an amount equal to whole of such income, or five lakh rupees, whichever is less.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 39 seeks to insert a new section 80JJA in the Income-tax Act relating to deduction in respect of employment of new workmen.

The new section provides that where the gross total income of an assessee, being an Indian company, includes any profits and gains from any industrial undertaking engaged in the manufacture or production of article or thing, such undertaking shall be allowed a deduction of an amount equal to thirty per cent. of additional wages paid to the new workmen employed by such assessee subject to certain conditions specified in sub-section (2) of the said new section. It is further provided that no deduction under the new section will be allowed if industrial undertaking is formed by splitting or reconstruction of an existing undertaking or amalgamation with an existing industrial undertaking. The expressions "additional wages", "regular workman", "wages" and "workman" have also been defined for the purposes of the new section.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 40 seeks to amend section 80P of the Income-tax Act relating to deduction in respect of incomes of cooperative societies.

Under the existing provisions contained in sub-clauses (i) and (ii) of clause (c) of sub-section (2) of section 80P, the profits and gains received by a consumer cooperative society are exempted from tax upto forty thousand rupees and the societies other than the cooperative societies are exempted upto twenty thousand rupees.

The proposed amendment seeks to increase monetary limit for exemption in the case of consumer cooperative societies from forty thousand rupees specified in the said sub-clause (i) to one hundred thousand rupees. In any other case from twenty thousand rupees, specified in the said clause (ii), to fifty thousand rupees.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 41 seeks to amend section 116 of the Income-tax Act relating to Income-tax authorities.

It is proposed to amend section 116 so as to include Joint Directors of Income-tax or Joint Commissioner of Income-tax in the classes of Income-tax Authorities.

The proposed amendment will take effect from 1st October, 1998.

Clause 42 seeks to amend the proviso to sub-section (1) of section 139 of the Income-tax Act which prescribes certain conditions for filing a return of income.

It is proposed to insert two more conditions for filing the return under the proviso to sub-section (1) of section 139. These are holding of a credit card, not being a add-on card, and membership of a club

which charges entrance fee of twenty-five thousand rupees or more.

It is also proposed to exclude travel to neighbouring countries or place of pilgrimage as the Board may specify in this behalf by notification in the Official Gazette, from being a condition for filing return under the proviso to sub-section (1) of section 139.

It is also proposed that the obligation to furnish a return will now arise on fulfilling any one of the conditions specified in the proviso to sub-section (1) of section 139.

This amendment will take effect from 1st August, 1998 and will, accordingly, apply in relation to the assessment year 1998-99 and subsequent years.

Clause 43 seeks to amend section 139A of the Income-tax Act relating to permanent account number.

Section 139A deals with procedure for obtaining permanent account number (PAN) and the obligation of every person to quote such number as provided in the section including in the documents relating to transactions prescribed by the Board. It is proposed to provide the alternative of quoting General Index Register (GIR) number till such time the permanent account number is allotted. It is also proposed to provide that Board may notify a class or classes of persons to whom the provisions of sub-section (5) of section 139A shall not apply. The power is delegated to Board to prescribe the form and contents which shall be furnished by a person not having either general index register number or permanent account number.

This amendment will take effect from 1st August, 1998.

Clause 44 seeks to amend sub-section (3) of section 143 of the Income-tax Act relating to assessment.

Under the existing provision, the Assessing Officer shall determine the sum payable by him on the basis of assessment in accordance with the provisions of sub-section (3) of section 143 of the Income-tax Act.

It is proposed to provide for determination of the sum payable by the assessee or refund of any amount due to him by the Assessing Officer while making an order of assessment after the 1st day of October, 1998 under the said sub-section (3) during the assessment year 1998-99 and subsequent years.

This amendment will take effect from the 1st October, 1998.

Clause 45 seeks to insert a new section 145A in the Income-tax Act relating to method of computation of opening and closing stock.

It is proposed that while computing the value of the inventory as on the 1st and the last day of the previous year, the computation according to the method of accounting regularly employed by the assessee shall be adjusted to include the amount of any tax, duty, cess or fees paid or liability incurred for the same under any law in force. This amendment is proposed as valuation of inventory after this adjustment will present the correct value.

This amendment will take effect retrospectively from 1st April, 1986 and will, accordingly, apply in relation to the assessment year 1986-87 and subsequent years.

Clause 46 seeks to amend section 158BA of the Income-tax Act relating to assessment of undisclosed income as a result of search.

It is proposed to insert an Explanation after sub-section (2) of

section 158BA to clarify that—

(a) the assessment made under Chapter XIV-B of the Act shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the income assessed in any regular assessment shall not be included in the block period;

(c) the income assessed in Chapter XIV-B of the Act shall not be included in the regular assessment of any previous year included in the block period.

The amendment proposed is of clarificatory in nature.

This amendment will take effect retrospectively from 1st July, 1995.

Clause 47 seeks to amend section 158BB of the Income-tax Act relating to computation of undisclosed income of the block period.

Under the existing provisions, for the purpose of determination of undisclosed income of a firm, the total income assessed for each of the previous year falling within the block period, is the income determined before allowing deduction under clause (b) in the Explanation to sub-section (1) of section 158BB of salary, interest, commission, bonus or remuneration, by whatever name called. It is proposed to provide that the income shall be determined before allowing the deduction of salary, interest, commission, bonus or remuneration, by whatever name called, to any partner, not being a working partner referred to in clause (b) of section 40.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

Clause 48 seeks to amend section 158BE of the Income-tax Act relating to time limit for completion of block assessment.

The proposed amendment seeks to renumber the existing Explanation of sub-section (2) of section 158BE and to insert a new Explanation 2 thereafter to provide that the execution of an authorisation for search under section 132 or for requisition under section 132A, will mean the date of conclusion of the search in respect of the authorisation as recorded in the last Panchnama in the case of a person in whose case the warrant has been issued. In the case of requisition under section 132A, the execution of an authorisation will mean the date when the authorised officer receives books, documents or assets.

The amendment proposed is of a clarificatory in nature.

The proposed amendment will take effect from 1st July, 1995.

Clause 49 seeks to amend section 192 of the Income-tax Act relating to deduction of tax at source from salary.

The existing provisions contained in sub-section (2B) of section 192 enables an assessee, having income under the head "salaries", in addition to income under any other head, not being a loss under any such other head, to furnish in the prescribed manner the details of the total income to the person responsible for making the payment who shall deduct out of salary payment the tax due on total income, subject to the conditions prescribed in that sub-section.

Proviso to the said sub-section (2B) provides that taking into account of such other income will not have the effect of reducing the tax deductible from the income under the head "salaries" below

the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account.

It is proposed to substitute the said sub-section (2B) so as to provide that an assessee having an income under the head "salaries" may furnish in the prescribed manner giving the details of the losses under the head "income from house property" to the person responsible for making the payment who shall take into account such loss for the purpose of computing the tax deductible from salaries, which may be reduced in such a case.

This amendment will take effect from 1st August, 1998 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 50 seeks to amend chapter XIX-B of the Income-tax Act relating to advance rulings.

Under the existing provisions, only the non-residents can apply before the Authority for seeking advance ruling in respect of transactions undertaken or proposed to be undertaken by them.

Sub-clause (a) seeks to amend the definitions of advance ruling and of the applicant. The proposed amendment seeks to enable the notified resident applicants to seek decisions in respect of issues raised in the orders of assessments in their cases pending before the Income-tax authority or the Tribunal.

Sub-clause (b) seeks to amend section 245-R of the Income-tax Act so as to provide that the proviso to sub-section (2) shall not apply in case an applicant is a resident of India.

This amendment will come into effect from 1st day of October, 1998.

Clause 51 seeks to insert a new section 246A in the Income-tax Act.

The proposed amendment is consequential to the abolition of the post of Deputy Commissioner (Appeals).

It is proposed to provide that against orders specified in clauses (a) to (r) of sub-section (1) of proposed section 246A, an appeal shall lie to Commissioner (Appeals). It is also proposed that every appeal which is pending before the appointed day before the Deputy Commissioner (Appeals) and in matter arising out of or connected with such appeal and which is so pending shall stand transferred on the day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage on which it was on that day.

It is further provided that an appellant may demand that before proceeding further with the appeal and the matter, the previous proceedings or any part thereof be re-opened or the appellant be re-heard.

This amendment will take effect from 1st October, 1998 and will, accordingly, apply in respect of orders mentioned in sub-section (1) made after that date.

Clause 52 seeks to amend section 249 of the Income-tax Act relating to appeals filed before Deputy Commissioner of Income-tax (Appeals) and Commissioner of Income-tax (Appeals).

Under the existing provision the form of appeal is not required to be accompanied by any fee. The proposed amendment seeks to prescribe a scale of fee for appeals to be made to Commissioner (Appeals) on or after 1st October, 1998, irrespective of the date of initiation of the assessment proceeding relating thereto. Commissioner (Appeals) shall hear appealable orders enumerated in clause 51 of the Bill. The amount of fee payable by the assessee

shall be two hundred and fifty rupees when the assessed income is one hundred thousand rupees or less; five hundred rupees when the assessed income is more than one hundred thousand rupees but not more than two hundred thousand rupees and one thousand rupees when the assessed income is more than two hundred thousand rupees.

The proposed amendment will take effect from 1st October, 1998.

Clause 53 seeks to amend section 252 of the Income-tax Act relating to Appellate Tribunal.

It is proposed to amend sub-section (2) and sub-section (2A) of section 252 which lays down the eligibility criteria for becoming a judicial member and an accountant member, respectively, of Income-tax Appellate Tribunal.

According to sub-section (2), a member of the Central Legal Service who has held a post in Grade I of that service or any equivalent or higher post for at least three years is eligible to become a judicial member. The nomenclature of the Central Legal Service has since been changed to the Indian Legal Service. It is proposed to amend the sub-section whereby a member of the Central Legal Service holding a post in Grade II or any higher post for three years shall become eligible to be a judicial member. It is also proposed to carry out the change in the nomenclature of the Central Legal Service to the Indian Legal Service.

According to sub-section (2A), a member of the Indian Income-tax Service, Group A who has held the post of Commissioner of Income-tax or any equivalent or higher post for at least three years is eligible to become an accountant member. It is proposed to amend sub-section (2A) whereby an Additional Commissioner of Income-tax holding the post for three years will also become eligible for appointment as an accountant member.

This amendment will take effect from the date on which this Bill receives the assent of the President.

Clause 54 seeks to amend section 253 of the Income-tax Act relating to appeals to the Appellate Tribunal.

Under the existing provisions, appeals before the Appellate Tribunal lies *inter alia* against the orders of Deputy Commissioner (Appeals) and Commissioner (Appeals). As it is proposed vide clause 51 of the Bill to designate Commissioner (Appeals) as the only appellate authority, consequential changes are proposed under sub-section (1) and sub-section (2).

Sub-section (6) provides that the amount of fee is payable by an assessee before an appeal is filed before Appellate Tribunal.

It is proposed to revise the amount of fee payable as follows:-

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent. of the assessed income, subject to a maximum of ten thousand rupees.

The proposed amendment will take effect from 1st October, 1998.

Clause 55 seeks to amend section 254 of the Income-tax Act providing for rectification of orders of Appellate Tribunal.

It is proposed to insert a proviso to sub-section (2) so as to provide that any application filed by the assessee under this sub-section on or after 1st October, 1998 shall be accompanied by a fee of fifty rupees.

This amendment will take effect from 1st October, 1998.

Clause 56 seeks to amend section 255 of the Income-tax Act relating to procedure of Appellate Tribunal. Under the existing provision, a member of the Appellate Tribunal may be empowered sitting singly to dispose of any case where the total income, as computed by the Assessing Officer, does not exceed one hundred thousand rupees.

It is proposed to increase the amount from one hundred thousand rupees to five hundred thousand rupees. Thus, a member sitting singly can decide a case where the total income, as computed by the Assessing Officer, does not exceed five hundred thousand rupees.

This amendment will take effect from 1st October, 1998.

Clause 57 seeks to amend section 256 of the Income-tax Act relating to reference to High Court.

Under the existing provision, an assessee or Commissioner may make an application requiring the Appellate Tribunal to refer to the High Court any question of law arising out of its order.

It is proposed to provide that such reference can be made only in respect of an order made by the Appellate Tribunal on or before 1st October, 1998.

The proposed amendment is consequential to insertion of new section 260A which provides for appeals to the High Court vide clause 60 of the Bill.

The proposed amendment will take effect from 1st October, 1998.

Clause 58 seeks to amend section 257 of the Income-tax Act relating to statement of case to the Supreme Court in certain cases.

The proposed amendment seeks to provide that a reference can be directly made to the Supreme Court by the Appellate Tribunal where application is made to the Tribunal under section 256 on or before 1st October, 1998.

The proposed amendment is consequential to clause 60 of the Bill which seeks to provide for appeal to the High Court.

The proposed amendment takes effect from the date on which an order is passed by the High Court in an appeal made to it in the proposed new section 260A.

Clause 59 seeks to insert a new sub-section (1A) in section 260 of the Income-tax Act.

The proposed amendment seeks to provide that where a judgement of a High Court in an appeal filed before it is varied or reversed, effect shall be given to the order passed on an appeal by the Supreme Court.

This amendment will take effect from 1st October, 1998.

Clause 60 seeks to insert new sections 260A and 260B under sub-heading "Appeals to High Court" containing provisions regarding direct appeal to High Court.

The proposed amendment seeks to provide that an appeal shall

lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. In an appeal under the proposed new section, the Memorandum of Appeal shall precisely state the substantial question of law involving the appeal and where the appeal is made by the assessee, such appeal shall be accompanied by a fee of ten thousand rupees and shall be filed within sixty days of the date on which order is communicated to him.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of appeals, be allowed to argue that the case does not involve such question. However, nothing in this section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such questions. The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

The new section 260B seeks to provide that an appeal filed under section 260A shall be heard by a bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or the majority, if any.

However, where there is no such majority, the point of law upon which they differ shall be referred to one or more of the Judges of the High Court and shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

The proposed amendment will take effect from 1st October, 1998.

Clause 61 seeks to amend section 261 of the Income-tax Act relating to appeal to Supreme Court.

Under the existing provision, an appeal shall lie to Supreme Court from any judgement of the High Court delivered on a reference made under section 256. It is proposed to amend section 261 so as to provide that such appeal shall lie in case any order is passed by the High Court under new section 260A.

This amendment will take effect from 1st October, 1998.

Clause 62 seeks to amend section 264 of the Income-tax Act regarding revision of order passed by subordinate authorities by the Commissioner (Appeals).

Under the existing provisions, there is no limit for disposal of application made for revision.

It is proposed to provide by inserting a new sub-section that in respect of an application made on or after 1st October, 1998, it shall be obligatory on the Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision.

It is also proposed that where a Commissioner fails to pass an order within the period prescribed, the application for revision of the assessee shall be deemed to have been allowed and all the consequences shall follow, accordingly.

It is also proposed to provide a new sub-section (7) that the

time limit prescribed under sub-section (6) shall not apply in cases where an order could not be passed within the prescribed time limit, in order to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.

The proposed amendment will take effect from 1st October, 1998 and will, accordingly, apply in respect of all petitions filed by the assessee on or after that date.

Clause 63 seeks to substitute section 271F of the Income-tax Act relating to penalty for failure to furnish return of income.

Under the existing provisions contained in section 271F, a person who fails to furnish his return of income, as required by the proviso to sub-section (1) of section 139, shall be liable to pay, by way of penalty, a sum of five hundred rupees.

Sub-section (1) of section 139 provides that every person, if his total income or the total income of any other person in respect of which he is assessable under the Income-tax Act, during the previous year, exceeded the amount which is not chargeable to income-tax, shall furnish a return of his income or income of such other person before the due date in accordance with the procedures specified in that sub-section.

It is proposed to substitute section 271F so as to provide that if a person fails to furnish the return, as required by sub-section (1) of section 139, he shall be liable to pay, by way of penalty, a sum of one thousand rupees. No change has been proposed in the existing penalty of five hundred rupees for failure to furnish return of income as required by the proviso to sub-section (1) of section 139.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 64 seeks to amend the proviso to sub-section (2) of section 272A of the Income-tax Act.

It is proposed to amend the proviso to sub-section (2) of section 272A so as to specify the outer limit of the penalty which can be imposed for failure to deliver or cause to be delivered in due time a copy of declaration under section 197A and furnishing certificate as required under section 203. The penalty in such cases shall not exceed the amount of tax deductible or collectible, as the case may be.

This amendment will take effect from 1st April, 1999.

Clause 65 seeks to amend section 285B of the Income-tax Act relating to submission of a statement by producers of cinematograph films.

Under the existing provisions contained in section 285B, any person carrying on the production of the cinematograph films is required to prepare and deliver within the time specified in the said section to the Assessing Officer a statement in the prescribed form containing particulars of all payments of over five thousand rupees in the aggregate made by him or due from him to each such person as is engaged by him in such production.

It is proposed to increase the said monetary ceiling from five thousand rupees to twenty-five thousand rupees.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.

Clause 66 seeks to amend the First Schedule of the Income-tax Act relating to computation of income of insurance business.

Under the existing provisions contained in rule 5 of the First Schedule, the profits and gains of any business of insurance other than life insurance are taken to be the balance of profits disclosed by the annual accounts subject to certain adjustments specified in the said rule.

It is proposed to amend rule 5 of the First Schedule relating to computation of profits and gains of insurance other than life insurance so as to provide disallowance of provisions for any tax, dividend or any reserve or any other provision prescribed by the Board and debited to the profit and loss account.

This amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years.

Clause 67 seeks to amend the Income-tax Act being consequential in nature so as to provide that from the 1st October, 1998 all appeals shall be heard by Commissioner (Appeals) only. Pending appeals shall stand transferred to Commissioner (Appeals) vide clause 51 of the Bill.

This amendment will take effect from 1st October, 1998.

Wealth-tax

Clause 68 seeks to substitute references of Income-tax Authorities for certain existing Income-tax Authorities in the Wealth-tax Act. The Fifth Central Pay Commission has recommended change of designation of certain Income-tax Authorities. The proposed amendment seeks to amend references of certain Income-tax Authorities specified in the Income-tax Act.

The proposed amendments are consequential in nature.

This amendment will take effect from 1st October, 1998.

Clause 69 seeks to amend section 2 of the Wealth-tax Act relating to definitions.

Sub-clause (a) seeks to substitute the existing definitions of Assessing Officer and other Income-tax Authorities.

The proposed amendments are consequential to amendments made in clauses 3 and 4 of the Bill.

This amendment will take effect from 1st October, 1998.

Sub-clause (b) seeks to amend sub-section (ea) of section 2 of the Wealth-tax Act relating to the definition of assets for the purpose of wealth-tax.

It is proposed to raise the annual salary limit of employees from two lakh rupees to five lakh rupees in the case where a house is allotted to them for residential purposes by the company. In such cases the house property shall not be included in the definition of assets on which wealth tax is charged.

It is also proposed to raise the period from five years to seven years from the date of acquisition in respect of the land held by an assessee as stock-in-trade, so that such land is excluded from the ambit of urban land.

It is further proposed to exclude let-out residential properties from the definition of asset. This would apply only to those properties that have been let-out for a period of at least three hundred days in a year.

It is also proposed to exclude any property in the nature of

commercial establishment or complex from the definition of asset.

These amendments will take effect from the 1st day of April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 70 seeks to amend section 5 of the Wealth-tax Act relating to exemption in respect of certain assets.

It is proposed to substitute clause (vi) of section 5 so as to provide that one house or a part of a house or plot of a land not exceeding five hundred square metres in area and belonging to either an individual or a Hindu undivided family shall not be included in the net-wealth of the assessee.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Clause 71 seeks to amend section 6 of the Wealth-tax Act, 1957 relating to exclusion of assets and debts outside India.

The proposed amendment seeks to delete the words "or resident but not ordinarily resident in India", occurring in section 6. This is as a consequence of the omission of residential status 'not ordinarily resident' in India from section 6 of the Income-tax Act.

This amendment will take effect from 1st April, 1999.

Clause 72 seeks to insert a new section 23A in the Wealth-tax Act so as to provide that an appeal against order of Assessing Officer shall lie to Commissioner (Appeals).

The proposed amendment is consequential to the abolition of the post of Deputy Commissioner (Appeals).

It is proposed to provide that against orders specified in clauses (a) to (j) of sub-section (1) an appeal shall lie to Commissioner (Appeals). It is also proposed that every appeal which is pending before the appointed day before the Deputy Commissioner (Appeals) and in matter arising out of or connected with such appeal and which is so pending shall stand transferred on the appointed day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage on which it was on that day.

It is further provided that an appellant may demand that before proceeding further with the appeal and the matter, the previous proceedings or any part thereof be re-opened or the appellant be re-heard.

This amendment will take effect from 1st October, 1998 and shall, apply in respect of orders mentioned in sub-section (1) made after that day.

Clause 73 seeks to amend section 24 of the Wealth-tax Act relating to appeals to the Appellate Tribunal.

Under the existing provisions, appeals before the Appellate Tribunal lie, inter alia, against the orders of Deputy Commissioner (Appeals) and Commissioner (Appeals). As it is proposed vide clause 72 of the Bill to create Commissioner (Appeals) as the only Appellate Authority, consequential changes have been made in sub-sections (1), (2) and (2A) of this section.

The proposed amendment will take effect from 1st October, 1998.

Clause 74 seeks to amend section 25 of the Wealth-tax Act relating to powers of Commissioners to revise orders of subordinate authorities.

Under the existing provisions, there is no time limit for disposal of application made for revision. It is proposed to provide by inserting a new sub-section that in respect of any application made on or after 1st October, 1998, it shall be obligatory on the Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision.

It is also proposed that where a Commissioner fails to pass an order within the period prescribed, the application for revision of the assessee, shall be deemed to have been allowed and all the consequences shall follow, accordingly.

The proposed amendment will take effect from 1st October, 1998.

Clause 75 seeks to insert a new section 27A in the Wealth-tax Act.

The proposed amendment seeks to provide that an appeal shall lie with the High Court from every order passed on an appeal by Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.

In an appeal under the proposed new section, the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal and where the appeal is made by an assessee, such appeal shall be accompanied by a fee of five thousand rupees.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated and the respondent shall, at a hearing of the appeal, be allowed to argue that the case does not involve such question. However, nothing in this section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

This amendment will take effect from 1st October, 1998 and will, accordingly, apply in relation to any order passed by the Appellate Tribunal after that date.

Clause 76 seeks to amend section 28 of the Wealth-tax Act.

Under the existing provisions, when a case is referred to a High Court under section 27, such case is heard by a Bench of not less than two Judges of the High Court.

It is proposed to amend this section so as to provide that an appeal before the High Court shall be heard by a Bench of not less than two Judges.

This amendment is consequential to insertion of section 27A vide clause 75 of the Bill.

This amendment will take effect from 1st October, 1998.

Clause 77 seeks to amend section 29 of the Wealth-tax Act.

Sub-clause (a) of the clause seeks to amend sub-section (1) of section 29 so as to incorporate the reference of section 27A in this sub-section which relates to appeal to High Court made by virtue of the newly inserted section 27A vide clause 75 of the Bill.

Sub-clause (b) of this clause seeks to insert a new sub-section (2A) in section 29. The proposed new sub-section (2A) provides that where the judgement of the High Court in an appeal filed before it is varied or reversed on an appeal by the Supreme Court under section 29, effect shall be given to the order passed on an

appeal by the Supreme Court.

This amendment will take effect from 1st October, 1998 and will, accordingly, apply in relation to any order passed by the Appellate Tribunal after that date.

Clause 78 seeks to amend section 3 of the Gift-tax Act relating to charge of gift-tax.

Under the existing provision contained in sub-section (2) of section 3, Gift-tax is charged at the rate of thirty per cent. on the value of all taxable gifts made from the assessment year commencing on 1st April, 1987 and during every subsequent year.

It is proposed to insert sub-section (3) in section 3 to provide that gift-tax at the rate of thirty per cent. on the value of all taxable gifts shall be charged in respect of gifts made before 1st October, 1988.

This amendment will take effect from 1st October, 1998 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Gift-tax

Clause 79 seeks to apply the provisions of the Wealth-tax Act to the Gift-tax Act.

It is proposed that certain provisions of the Wealth-tax Act which are being amended by the Finance Bill (No.2) 1998 shall also apply in relation to Gift-tax Act.

This amendment will take effect from the 1st day of October, 1998.

Interest-tax

Clause 80 seeks to amend section 3 of the Interest-tax Act relating to tax authorities.

It is proposed to amend clause (3) of section 3 so as to substitute Deputy Commissioner for Assistant Commissioner. It is also proposed to insert Joint Commissioner within the expressions mentioned in section 3. The amendments proposed are of a consequential nature.

This amendment will take effect from 1st October, 1998.

Clause 81 seeks to amend section 15 of the Interest-tax Act relating to appeals to the Commissioner (Appeals).

Under the existing provision, an appeal filed before the Commissioner (Appeals) is only required to be in the prescribed form and verified in the prescribed manner. No fee has been prescribed for filing appeals to the Commissioner (Appeals).

The proposed amendment seeks to provide a fee of two hundred fifty rupees to be filed along with appeal before the Commissioner (Appeals) in respect of appeals filed on or after 1st October, 1998.

The proposed amendment takes effect from 1st October, 1998.

Clause 82 seeks to amend section 16 of the Interest-tax Act relating to appeals to the Appellate Tribunal.

Under the existing provisions, appeals to the Appellate Tribunal against orders of Commissioner (Appeals) shall be accompanied with a fee of two hundred and fifty rupees.

The proposed amendment seeks to increase the amount of fee from two hundred and fifty rupees to one thousand rupees in

respect of an appeal to be filed before the Appellate Tribunal on or after 1st October, 1998.

The proposed amendment will take effect from 1st October, 1998.

Clause 83 seeks to amend section 20 of the Interest-tax Act relating to revision of orders passed by Commissioners.

Under the existing provisions, there is no time limit for disposal of applications made for revision.

It is proposed to provide by inserting a new sub-section that in respect of an application made on or after 1st October, 1998, it shall be obligatory on the Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision.

It is also proposed that where a Commissioner fails to pass an order within the period prescribed, the application for revision of the assessee shall be deemed to have been allowed and all the consequences shall follow, accordingly.

It is proposed to provide a new sub-section (7) that the time limit prescribed under sub-section (6) shall not apply in cases where an order could not be passed within the prescribed time limit, in order to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.

The proposed amendment will take effect from 1st October, 1998 and will, accordingly, apply in respect of all petitions filed by the assessee on or after that date.

Expenditure-tax

Clause 84 seeks to amend section 3 of the Expenditure-tax Act so as to make the provisions of the Act applicable to hotels wherein room charges for any unit of residential accommodation are two thousand rupees or more per day per individual as against the existing charges of one thousand two hundred rupees.

This amendment will take effect from 1st October, 1998.

Clause 85 seeks to amend section 6 of the Expenditure-tax Act relating to tax authorities.

The proposed amendment seeks to amend section 6 so as to provide a new class of Expenditure-tax authorities. Under the existing provisions the existing Deputy Director of Income-tax and Deputy Commissioner of Income-tax are proposed to be redesignated as Joint Director of Income-tax and Joint Commissioner of Income-tax respectively. The proposed amendment includes references of these authorities in sub-section (1) and sub-section (3) of section 6 of the Expenditure-tax Act.

The proposed amendment is consequential to the insertion of new Income-tax authorities, namely, Joint Director of Income-tax and Joint Commissioner of Income-tax vide clause 3 of the Bill.

This amendment will take effect from 1st October, 1998.

Clause 86 seeks to amend section 21 of the Expenditure-tax Act relating to revision of orders by the Commissioner.

Under the existing sub-section (4) of section 21, it is provided that no order under this section shall be passed after the expiry of two years from the end of the financial year in which the order sought to be reviewed has been passed.

It is proposed to substitute sub-section (4) so as to provide

that in respect of application made on or after 1st October, 1998 by the assessee, it shall be mandatory for the Commissioner to pass an order within one year from the end of financial year in which such application is made by the assessee for revision. Where no order is passed by the Commissioner within the time prescribed under sub-section (4), it shall be presumed as if the application for revision had been admitted and all the consequences shall follow, accordingly.

This amendment will take effect from 1st October, 1998.

Clause 87 seeks to amend section 22 of the Expenditure-tax Act relating to appeals to the Commissioner (Appeals).

Under the existing provision, an appeal filed before the Commissioner (Appeals) is only required to be in the prescribed form and verified in the prescribed manner. No fee has been provided for filing appeals to the Commissioner (Appeals).

The proposed amendment seeks to provide a fee of two hundred fifty rupees to be filed along with appeal before the Commissioner (Appeals) in respect of appeals filed on or after 1st October, 1998.

The proposed amendment will take effect from 1st October, 1998.

Clause 88 seeks to amend section 23 of the Expenditure-tax Act.

It is proposed to increase the amount of fee from two hundred rupees to one thousand rupees in case of appeal filed on or after 1st October, 1998.

This amendment will take effect from 1st October, 1998.

Clause 89 relates to short title and commencement of the Scheme for settlement of certain disputed direct and indirect tax arrears, namely, Kar Vivad Samadhan Scheme.

Clause 90 contains definition of certain terms and expressions used in the Scheme.

Clause 91 seeks to provide for settlement of certain disputed arrears of taxes in relation to disputed income, disputed wealth, disputed expenditure, disputed chargeable interest, disputed value of gift and tax arrears payable under the direct tax enactments and the indirect tax enactments. Under the Scheme, if any person makes on or after the 1st September, 1998 but on or before 31st December, 1998, a declaration to the designated authority relating to the arrear of tax payable by him, the amount shall be determined as per the rates laid down in that clause. Under the direct tax enactment, the arrears will be payable at the rate of thirty-five percent in cases of a company or a firm; thirty percent in case of persons other than a company or a firm. In search and seizure cases, higher rates of tax of forty-five percent have been provided for a company or a firm and others respectively. Different rates are provided for the disputed cases under Wealth tax, Expenditure-tax, Interest tax and Gift-tax Acts. Under the indirect tax enactment, the arrears are payable at fifty percent of tax areas.

Clause 92 provides that a declaration under the Scheme will be made to the designated authority. This clause further provides that the declaration will be in such form and will be verified in such manner as may be prescribed.

Clause 93 provides that the designated authority will pass an order on the declarations received by him within sixty days from the date of receipt of such declaration. The designated authority

will also issue a certificate to the person making the declaration setting forth therein the particulars of the sum payable by the declarant as determined. The declarant shall pay the sum so determined by the designated authority and furnish proof of such payment before him. This clause further provides that the matter so determined under this clause will not be open for any dispute in the court of law or before any other forum. The declarant is also required to withdraw the appeals pending before any appellate authority or court relating to the tax arrears pending before them. In case it is found that any of the material particulars furnished in the declaration by the declarant is found to be false at any stage, it will be presumed that the declaration has never been made and all consequences under the direct tax enactment or the indirect tax enactment under which the proceedings against the declarant are pending shall be revived.

Clause 94 seeks to provide that the designated authority shall, on the declarant fulfilling the conditions provided in section 93, grant the declarant immunity from penalty and prosecution in relation to such matters as are the subject matter of the declaration.

Clause 95 seeks to bar further proceedings in respect of tax arrears determined under the Scheme.

Clause 96 seeks to provide that in no event the amount of tax paid in pursuance of a declaration made under clause 91 will be refunded.

Clause 97 clarifies that, except as otherwise expressly provided, the Scheme should not be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than in respect of which the declaration pertains to.

Clause 98 seeks to specify the circumstances under which the provisions of the Scheme will not be applicable. The Scheme would not be applicable, inter alia, to those persons against whom prosecution proceedings under Chapter IX or Chapter XVII of the India Penal Code, the Narcotics Drugs and Psychotropic Substances Act, 1985 the Terrorists and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988 or where the order of detention has been issued under COFEPOSA or where the prosecution for concealment has been launched under any direct tax enactment or for any offence under indirect tax enactment. The persons who have been proceeded against a Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 are also barred from the Scheme.

Clause 99 seeks to empower the Central Government to issue orders, instructions and directions to the various authorities for proper administration of the Scheme. It also empowers the Central Government to issue such orders, instructions or directions to all other persons employed in the execution of the Scheme. The Central Government, however, will not issue any orders, instructions or directions to the designated authority to dispose of any particular case in a particular manner.

Clause 100 seeks to empower the Central Government to pass any order not inconsistent with the provisions of this Scheme for removing any difficulty which may arise in giving effect to its provisions. All such orders made by the Central Government shall be required to be laid before Parliament.

Clause 101 seeks to empower the Central Government to make rules for carrying out the provisions of the Scheme. All rules made under the Scheme shall be laid before Parliament.

Customs

Clause 102 seeks to insert sub-section (4) and sub-section (5) in section 25 of the Customs Act, 1962 to provide for the effective date of every notification issued under sub-section (1) of section 25, unless otherwise specified, as the date of its issue by the Central Government for publication in the Official Gazette and requiring such notification to be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi. However, if the notification comes into effect on a date later than the date of issue, the notification may be offered for sale on or before the date on which the notification comes into force.

Clause 103 seeks to amend section 27 of the Customs Act, 1962 so as to provide that where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, for claiming refund shall be computed from the date of adjustment of duty after the final assessment.

Clause 104 seeks to substitute the existing sections 53 to 55 of the Customs Act, 1962 by new sections 53 to 55 to provide for certain changes in the provisions relating to goods in transit and transhipment with out payment of duty from any conveyance, subject to certain conditions.

Clause 105 seeks to insert Chapter XIVA in the Customs Act, 1962 to provide for setting up of a Customs and Central Excise Settlement Commission on the lines of a similar Commission already working under the Income-tax Act, 1961.

The Settlement Commission established under the Central Excise Act will also entertain application for settlement of cases relating to the levy, assessment and collection of customs duty or any appeal or revision in connection with such levy, assessment or collection. Any importer, exporter or any person who has incurred any liability under any law levying duties of customs may make an application in such form and in such manner as may be prescribed stating, inter alia, a true and full disclosure of his duty liability which has not been disclosed before the proper officer having jurisdiction, the manner in which such liability has been incurred and the additional amount of customs duty accepted to be payable by him. Such applications will be accepted only where the applicant has filed a bill of entry or shipping bill under the Customs Act, 1962. Only cases where the show cause notice or demand notice for recovery of duty has been received by the applicant will be entertained. The Settlement Commission shall, however, not entertain cases pending with the Appellate Tribunal or any Court and nor will it entertain applications involving interpretation of the classification of goods under the Customs Tariff Act, 1975. Cases where the additional amount of duty accepted to be payable by the applicant approaching the Settlement Commission exceeds two lakh rupees alone will be covered by the proposed Settlement Commission. The Settlement Commission shall, subject to certain provisions, have power to grant immunity from prosecution penalty, fine and interest in respect to the case covered by the settlement. Every order of settlement shall be conclusive as to the matters covered by the order.

The Commission shall be established from a date to be notified by the Central Government in the Official Gazette.

Clause 106 seeks to levy additional duty of customs on imported motor spirit, commonly known as petrol, at the rate of one rupee per litre. The levy is for the purpose of mobilising resources for

the development of roads.

Clause 107 seeks to amend the Customs Tariff Act, 1975.

Sub clause (a) seeks to insert a new section 3A in the Customs Tariff Act, 1975 to impose a special additional duty of customs on imported articles, at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on sale and purchase of a like article in India. Until the rate of such duty is specified by the Central Government, the special additional duty will be levied at the rate of eight per cent. of the value of the imported article. It also prescribes the method of computation of the value of the imported articles for the purpose of the said levy;

Sub clause (b) seeks to amend the First Schedule to the Customs Tariff Act, so as to,—

(a) reduce the basic customs duty in respect of articles falling under the following Chapters, heading, and sub-heading Nos., Chapters 8 (sub-heading No. 0806.20), 13 (sub-heading Nos. 1302.19 and 1302.20), 21 (sub-heading No. 2106.90), 22 (sub-heading Nos. 2207.10, 2208.20, 2208.30, 2208.40, 2208.50, 2208.60, 2208.70 and 2208.90), 27 (heading No. 27.09), 29 (sub-heading No. 2933.71), 33 (sub-heading No. 3302.10), 38 (heading No. 38.18), 44 (heading No. 44.04, 44.05, 44.06 and 44.07), 51 (heading No. 51.05), 69 (heading No. 69.03), 84 (sub-heading No. 8471.70), 85 (heading No. 85.08 and sub-heading Nos. 8501.10, 8532.90, 8533.90 and 8541.90); 91 (heading Nos. 91.08 and 91.10);

(b) increase the basic customs duty in respect of articles falling under the following Chapters, heading, and sub-heading Nos., Chapters 29 (sub-heading Nos. 2905.11 and 2918.14), 37 (heading No. 37.07), 44 (heading Nos. 44.10 and 44.11), 48 (heading Nos. 48.02, 48.03, 48.04, 48.05, 48.06, 48.07, 48.08, 48.09, 48.10 and 48.11 and sub-heading No. 4823.20), 74 (except heading Nos. 74.01, 74.02, 74.03 and 74.04), 84 (sub-heading Nos. 8407.31, 8407.32, 8407.33, 8407.34, 8408.20, 8409.91 and 8409.99); and

(c) change the mode of levy of duty from ad valorem to ad valorem-cum-specific, in respect of articles falling under sub-heading No. 8483.20.

Excise

Clause 108 seeks to substitute the existing *Explanation 1* in section 4A of the Central Excise Act, 1944 (1 of 1944) so as to explain the scope of retail sale price.

Clause 109 seeks to insert sub-section (5) and sub-section (6) in section 5A of Central Excise Act, 1944 to provide for the effective date of every notification issued under sub-section (1) of section 5(A) unless otherwise specified as the date of its issue by the Central Government for publication in the Official Gazette and requiring such notification to be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi. However, if the notification comes into force on a date later than the date of issue, the notification may be offered for sale on or before the date on which the notification comes into force.

Clause 110 seeks to insert a new clause (bbbb) in sub-section (1) of section 9 of the Central Excise Act, 1944 to provide for punishment under said section 9 in case of contravention of the provisions of the said Act or the rules made thereunder in relation to credit of duty in respect of inputs goods and capital goods,

commonly known as "MODVAT".

Clause 111 seeks to amend section 11B of the Central Excise Act, 1944, so as to, define "relevant date", where duty of excise is paid provisionally under the Central Excise Law, the date of adjustment of duty after final assessment thereof.

Clause 112 seeks to insert clause (d) in the first proviso to sub-section (1) of section 35B of the Central Excise Act, 1944 to provide, from a date to be notified, that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order relating to credit of duty paid on excisable goods used as inputs or capital goods in the manufacture of or by the manufacturer of final products under the said Act and rules made thereunder.

Clause 113 seeks to insert Chapter V in the Central Excise Act, 1944 to provide for the setting up of a Customs and Central Excise Settlement Commission on the lines of a similar Commission already working under the Income-tax Act, 1961.

The proposed Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws. The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. The Chairman of the Settlement Commission may, for the disposal of any particular case, constitute a special Bench. Any applicant under the Central Excise tax laws may make an application in such form and in such manner as may be prescribed stating, *inter alia*, a true and full disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been incurred and the additional amount of excise duty accepted to be payable by him. Such applications will be accepted only where the applicant has filed the prescribed monthly returns showing production, clearances and Central Excise Duty. Only cases where the show cause notice or demand notice for recovery of duty has been received by the applicant will be entertained. The Settlement Commission shall, however, not entertain cases pending with the Appellate Tribunal or any Court and nor will it entertain applications involving interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985. Cases where the additional amount of duty accepted to be payable by the applicant approaching the Settlement Commission exceeds two lakh rupees alone will be covered by the proposed Settlement Commission. The Settlement Commission shall, subject to certain provisions, have power to grant immunity from prosecution, penalty, fine and interest in respect to the case covered by the settlement. Every order of settlement shall be conclusive as to the matters covered by the order.

This Commission shall be established from a date to be notified by the Central Government in the Official Gazette.

Clause 114 seeks to levy additional duty of excise on motor spirit, commonly known as petrol, at the rate of one rupee per litre. The levy is for the purpose of mobilising resources for the

development of roads.

Clause 115 seeks to amend the Schedule to the Central Excise Tariff Act, so as to—

(a) reduce the excise duty in respect of articles falling under the following Chapters, heading Nos. and sub-heading Nos., namely:—

"Chapters 38 (sub-heading No. 3824.20), 39 (heading Nos. 39.05, 39.06, 39.07, 39.08, 39.09, 39.10, 39.11, 39.12, 39.13, 39.14 and sub-heading Nos. 3903.20 and 3903.30), 54 (sub-heading Nos. 5402.10, 5402.31, 5402.41, 5402.51 and 5402.61), 85 (sub-heading No. 8524.32);"

(b) increase the excise duty in respect of articles falling under Chapters, heading and sub-heading Nos., namely:—

"Chapters 4 (sub-heading No. 0401.13), 11 (sub-heading No. 1102.00), 21 (sub-heading No. 2101.30), 24 (sub-heading Nos. 2403.11, 2403.12, 2403.13, 2403.14 and 2403.15), 25 (sub-heading Nos. 2504.21 and 2504.31), 27 (sub-heading Nos. 2710.11, 2710.12, 2710.13 and 2710.19), 30 (sub-heading No. 3003.20), 32 (sub-heading No. 3215.10), 40 (sub-heading No. 4012.90), 48 (sub-heading No. 4819.19), 51 (sub-heading No. 5106.11), 82 (heading No. 82.15), 84 (sub-heading Nos. 8434.10 and 8434.90), 85 (sub-heading No. 8523.12), 87 (sub-heading Nos. 8701.10, 8702.10, 8706.11 and 8706.21), 90 (sub-heading Nos. 9001.10, 9003.11, 9003.19, 9004.10, 9018.00, 9019.00, 9020.00, 9021.90, 9022.10 and 9032.80), 93 (sub-heading Nos. 9302.00, 9303.00, 9304.00, 9305.00, 9306.00 and 9307.00), 94 (sub-heading No. 9402.10) and 96 (sub-heading No. 9607.00);"

(c) amend the Section Notes, Chapter Notes and the tariff descriptions so as to,—

- (i) define "manufacture" in relation to products of Chapter 4;
- (ii) define "brand name" in relation to products of Chapter 4;
- (iii) define the scope of products of heading No. 04.04;
- (iv) substitute heading Nos. and sub-heading Nos. 0402.10, 0403.10 and 04.04;
- (v) define "manufacture" in relation to products of Chapter 9;
- (vi) define "brand name" in relation to products of Chapter 9;
- (vii) define the scope of heading No. 09.03;
- (viii) substitute heading Nos. 09.02 and 09.03;
- (ix) define "manufacture" in relation to products of Chapter 16;
- (x) define "brand name" in relation to products of Chapter 16;
- (xi) substitute heading No. 16.01;
- (xii) rephrase description of goods in sub-heading Nos. 1704.10 and 1704.90;
- (xiii) restructure heading No. 19.05 so as to rationalize duty on wafers;
- (xiv) define the scope of heading No. 21.08;
- (xv) empower the Central Government to define "newsprint" by notification published in the official gazette for the purposes of Chapter 48;
- (xvi) define the term "retail sale price" in Chapter 64;
- (xvii) amend the tariff description of sub-heading No. 6401.12 so as to change the scope of the entry;

(xviii) define "manufacture" in relation to products of heading Nos. 69.06, 69.07, 69.09, 69.10, 69.11, 70.06, 70.07, 70.08, 70.10, 70.13 and 70.15;

(ix) substitute heading No. 84.52;

(xx) define the term "retail sale price" in Chapter 85;

(xxi) amend the tariff description of heading No. 8524.20 to cover all software;

(xxii) merge the sub-heading Nos. 8524.34 and 8524.35 into a single sub-heading No. 8524.34 covering all video cassettes;

(xxiii) omit sub-heading No. 8527.20;

(xxiv) prescribe a specific rate of excise duty on colour television receivers falling under heading No. 85.28 where the retail sale price is not declared on the package at the time of clearance from the factory of production or where the retail sale price declared does not form the sole consideration for sale to the ultimate consumer, and to prescribe a rate of 18% ad valorem in respect of other goods falling under heading No. 85.28;

(xxv) amend the tariff description of heading No. 85.39 so as to change the scope of the entry;

Clause 116 seeks to amend the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, so as to,—

(i) increase duty in respect of articles falling under sub-heading Nos. 2403.11, 2403.12, 2403.13, 2403.14, 2403.15 and 2403.19;

(ii) change the mode of levy from ad valorem to specific rate of duty in respect of articles falling under sub-heading Nos. 5902.10, 5902.20 and 5902.90;

Clause 117 seeks to amend the Schedule to the Additional Duties of Excise (Textile and Textile Articles) Act, so as to exempt duty on woollen fabrics.

Clause 118 seeks to amend the Medicinal and Toilet preparations (Excise Duties) Act, 1955, so as to reduce the rates of duties on toilet preparations containing alcohol or narcotic drug or narcotics.

Service tax

Clause 119 seeks to substitute sections 65, 66 and 68 and amend section 67 of the Finance Act, 1994, relating to service tax so as to levy a tax on services rendered by —

- (i) an architect to a client in the field of architecture;
- (ii) an interior decorator to a client in relation to planning, design or beautification of spaces;
- (iii) a management consultant to a client in connection with the management of any organisation;
- (iv) a practising chartered accountant to a client in professional capacity;
- (v) a practising cost accountant to a client in professional capacity;
- (vi) a practising company secretary to a client in professional capacity;
- (vii) a real estate agent to a client in relation to real estate;
- (viii) a security agency to a client in relation to the security of any property or person;

(ix) a credit rating agency to a client in relation to the credit rating of any financial obligation, instrument or security;

(x) a market research agency to a client in relation to market research of any product, service or utility;

(xi) an underwriter to a client in relation to underwriting;

(xii) a slaughter house to a client in relation to slaughtering of bovine animals.

Service tax is sought to be levied on the above services at the rate of five per cent. on the gross amount charged to the client by the architect, interior decorator, management consultant, chartered accountant, cost accountant, company secretary, real estate agent, security agency, credit rating agency, market research agency and underwriter and at the rate of one thousand rupees per animal in the case of services rendered by a mechanised slaughter house.

This clause also seeks to delete the levy of service tax on service rendered by goods transport operator, pandal or shamiana contractor and outdoor caterer and accordingly deleting references in respect of these services by amending the provisions of sections 65, 66 and 67.

This clause also seeks to amend the definition of the terms 'assessee', 'rent-a-cab scheme operator', 'service tax' and 'tour operator' and to delete the definition of the term 'person responsible for collecting the service tax' in section 65.

This clause also seeks to substitute section 68 so as to provide that every person providing taxable service to any person shall pay service tax and also to provide that in respect of any taxable service the central government may prescribe the person liable to pay the service tax and the manner of collection and recovery of service tax.

This clause also seeks to amend section 69 to empower the Central Government to prescribe the time, manner and form for making an application for registration by a person liable to pay the service tax.

This clause also seeks to substitute section 70 to provide that the person liable to pay the service tax shall furnish a return in such form, manner and frequency as prescribed in the rules and also to delete the provisions for issue of notice in case the assessee has failed to furnish the return.

This clause also seeks to make consequential amendments in section 71 due to the proposed amendment to section 70.

This clause also seeks to make consequential amendments in section 76 due to the proposed amendments to section 68.

This clause also seeks to amend section 82 so as to empower only the commissioner of central excise to authorise search of any premises.

This clause also seeks to amend section 83 to make applicable sections 11BB and 12A of the Central Excise Act, 1944 in relation to service tax.

This clause also seeks to omit sections 87, 88, 89, 90, 91 and 92 of the Finance Act, 1994.

This clause also seeks to amend section 93 to empower the Central Government to exempt taxable service of any specified description by a special order under circumstances of exceptional nature.

This clause also seeks to amend section 94 so as to empower Central Government to make rules in respect of collection and recovery of service tax, the time, manner and the form in which application for registration may be made under section 69 and the form, manner and frequency of the returns to be furnished under section 70.

Clause 120 seeks to omit section 37 of the Export-Import Bank of India Act, 1981.

Section 37 of the said Act provides that the Export Import Bank of India shall not be liable to pay income-tax, surtax or any other tax, in respect of any income, profits or gains (a) accruing to the Export Development Fund or any amount received to the credit of such Fund established under section 15 of that Act, and (b) in respect of any income, profits or gains derived, or any

amount received, by such Bank. It is proposed to omit section 37 of the aforesaid Act to make the said Fund or Bank liable to pay income-tax or any other tax in respect of the income, profits or gains accruing to such Fund or any amount received to the credit of that Fund and any income, profits or gains derived, or any amount received, by aforesaid Bank.

This amendment will take effect from the 1st April, 1999.

Clause 121 seeks to substitute the First Schedule to the Indian Post Office Act, 1898 so as to provide for the revised rates for competition post cards, letter-cards, letters and parcels.

These revised rates will be effective from a date to be notified after the Finance Bill is passed.

Clause 122 seeks to repeal the Finance Act, 1998.

FINANCIAL MEMORANDUM

Clause 113 of the Bill seeks to insert a new Chapter V relating to setting up of a Customs and Central Excise Settlement Commission on the lines of a similar Commission already working under the Income-tax Act, 1961. To begin with, it is proposed to constitute a principal Bench at Delhi and three additional Benches at Mumbai, Chennai and Calcutta. The recurring expenditure for the said four Benches of the Settlement Commission in respect of salaries, wages, rents, rates, taxes and office expenses are estimated to be Rs. 1,99,01,376 per annum. The non-recurring expenditure in respect of office equipment, office furniture, electrical installations and motor vehicles is estimated to be Rs. 1,00,64,000.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend clause (1) of section 10 of the Income tax Act relating to definition of 'block of assets'. The said clause confers powers upon the Central Board of Direct Taxes to prescribe the percentage of depreciation in respect of 'block of assets' which means a group of assets falling within a class of assets being building, machinery, plant or furniture. The definition of 'block of asset' is being amended so as to include the intangible assets such as know-how, patents, copyrights, trademarks, licences, franchises or similar business or commercial rights. Now it is proposed to confer power upon the Boards to prescribe depreciation in respect of the said intangible assets.

Clause 7 of the Bill, *inter alia*, seeks to substitute clause (23G) of section 10 of the Income-tax Act relating to certain exemptions. The said clause (23G) proposes to exempt income by way of interest of an infrastructure capital fund or infrastructure capital company from primary investment in infrastructure enterprise wholly engaged in developing, maintaining and operating infrastructure facility. It is proposed to confer power upon the Central Board of Direct Taxes to make rules in respect of applications to be made by the said infrastructure enterprises to the Central Government for approval and also prescribe the conditions to be satisfied by the aforesaid enterprises.

The new sub-clause also seeks to empower the Central Board of Direct Taxes to notify 'infrastructure facility' which is of similar nature specified in clause (c) of the Explanation to the said clause (23G) which fulfils the condition specified in sub-section (4A) of section 80-IA of the Income-tax Act.

Clause 12 of the Bill seeks to insert a new section 33ABA in the Income tax Act relating to Site Restoration Fund. Under the new section, certain deductions are admissible subject to certain conditions specified therein. One of the conditions is that the assessee furnishes the report of audit in the prescribed form duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288. The proviso to sub-section (2) of the new section provides that it would be sufficient compliance by the assessee if he furnishes the said report and a further report in a case where such assessee gets the accounts of his business audited under any other law. It is proposed to confer powers upon the Central Board of Direct Taxes to prescribe the form of such further report to be furnished by the assessee.

Sub-section (9) of the proposed new section 33ABA confers power upon the Central Government to direct, by notification in the Official Gazette, that the deduction under the new section shall not be allowed after such date as may be specified in such notification.

Clause 32 of the Bill seeks to substitute new section 80DD for section 80DD and section 80DDA of the Income-tax Act for allowing deduction in respect of maintenance including medical treatment of certain category of handicapped dependants. Sub-clause (ii) of clause (b) of sub-section (4) of the said new section 80DD proposes to confer power upon the Central Board of Direct Taxes to specify in the rules the permanent physical disability (including blindness) or mental retardation for the purposes of deduction under the said section 80DD.

Clause 34 of the Bill seeks to insert new section 80GG of the Income-tax Act relating to deductions in respect of rents paid. It is proposed to confer power upon the Central Board of Direct Taxes to prescribe certain conditions or limitations subject to which deduction of the amount specified under the new section shall be allowed.

Clause 35 of the Bill proposes to insert a new section 80HHBA in the Income-tax Act relating to deduction in respect of profits and gains from housing project in certain cases. One of the conditions specified therein requires the assessee to furnish, alongwith his return of income, a report of audit of the accounts in the prescribed form duly signed and verified by such accountants as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act. It is proposed to confer power upon the Central Board of Direct Taxes to prescribe the form of the said audit report.

Clause 37 of the Bill seeks to amend section 80-IA of the Income-tax Act relating to deduction in respect of profits and gains from industrial undertakings, etc., in certain cases. The undertakings engaged in the infrastructure facilities qualify for deductions under section 80-IA subject to certain conditions specified in the said section. This clause, *inter alia*, proposes to extend the deductions available under the said section to the housing projects. Sub-clause (iv) of clause (ca) of sub-section (12) of section 80-IA confers power upon the Central Government to prescribe the authority for approving the housing projects eligible for deduction under the said section 80-IA.

Clause 39 of the Bill seeks to insert a new section 80JJAA in the Income-tax Act relating to deduction in respect of employment of new workmen. Under the provisions of new section, an assessee, being an Indian company, shall be allowed certain deductions subject to certain conditions specified in the said section 80JJAA. One of the conditions specified in clause (b) of sub-section (2) of the new section 80JJAA requires the assessee to furnish alongwith the return of income the report of the accountant as defined in the Explanation below sub-section (2) of section 288 giving such particulars as may be prescribed by the Central Board of Direct Taxes.

Clause 42 of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income. Section 139 specifies certain conditions for filing the return. One of the conditions specified in the proviso to sub-section (1) of section 139 is that any person, who incurs expenditure for himself or any other person on travel to any foreign country, shall be required to file return of his income. This clause, *inter alia*, seeks to insert Explanation 4 so as to confer power upon the Central Board of Direct Taxes to specify in the Official Gazette the neighbouring countries or such other places of pilgrimage which shall not be included in the condition of travel to any foreign country for the purposes of proviso to sub-section (1) of section 139.

Clause 43 of the Bill proposes to amend section 139 A of the Income-tax Act relating to permanent account number. This clause, *inter alia*, proposes that a person, who has applied, but has not been allotted the permanent account number, shall quote General

Index Register Number in all his returns, correspondence, challans for payment of any sum, or such transactions as may be prescribed by the Central Board of Direct Taxes under sub-section (5) of section 139 A. This clause confers powers upon the Central Board of Direct Taxes to make rules providing for the form of the declaration to be made by a person who has not been allotted a permanent account number or who does not have General Index Register Number.

Clause 49 of the Bill proposes to amend section 192 of the Income-tax Act relating to deduction of tax at source from salaries. This clause *inter alia*, allows the loss under the head "Income from house property" to be taken into account for making deduction under section 192 by any person responsible for paying any income chargeable under the head "Salaries". The proposed deductions relating to loss under the head "Income from house property" shall be taken into account on assessee's furnishing the particulars of such loss to the person responsible for making the payment under sub-section (1) of section 139. The new sub-section (2B) of section 192 confers power upon the Central Board of Direct Taxes to prescribe the form in which the assessee furnishes the particulars of such loss and the manner in which such form be verified.

Clause 50 of the Bill seeks to amend section 245N of the Income-tax Act relating to definitions for the purposes of Chapter XIX-B relating to advance rulings. This clause proposes to amend the definition of "applicant" specified in clause (b) of section 245 N. It is proposed to confer power upon the Central Government to notify in the Official Gazette the class of persons who shall be allowed to file an application under the said Chapter.

Clause 54 of the Bill seeks to amend section 253 of the Income-tax Act relating to appeal to the Appellate Tribunal. This clause proposes to confer powers upon the Central Government to prescribe the form in which an appeal shall be made to the Appellate Tribunal on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clause 66 of the Bill seeks to amend the First Schedule to the Income-tax Act relating to insurance business. This clause confers powers upon the Central Board of Direct Taxes to prescribe any other provision in addition to the provision for any tax, dividend or reserve which shall be added back in computing the profit and gains of other insurance business.

Clause 72 of the Bill seeks to insert a new section 23A in the Wealth-tax Act relating to appealable orders before Commissioner (Appeals). This clause confers powers upon the Central Board of Direct Taxes to prescribe the form of appeal to the Commissioner (Appeals) and the manner in which such form be verified.

Clause 81 of the Bill seeks to amend section 15 of the Interest-tax Act relating to appeal to Commissioner (Appeals). This clause confers powers upon the Central Board of Direct Taxes to prescribe the form of appeal which may be filed on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clause 87 of the Bill seeks to amend section 22 of the Expenditure-tax Act relating to appeal to Commissioner (Appeals). This clause confers powers upon of the Central Board of Direct

Taxes to prescribe the form of appeal which shall be filed on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clauses 89 to 101 of the Bill contain provisions in respect of Kar Vivad Samadhan Scheme, 1998 for settlement of certain disputed direct tax arrears and indirect tax arrears. It is proposed to confer powers upon the Chief Commissioner of Income-tax and Chief Commissioner of Central Excise to notify the designated authority not below the rank of Commissioner of Income tax and Commissioner of Central Excise, for the purposes of the said scheme.

It is also proposed to confer powers upon the Central Board of Direct Taxes to prescribe (a) the form in which a declaration may be made under section 91 and the manner in which such declaration be verified (b) the form of certificates which may be granted under sub-section (1) of section 93 (c) the manner in which the orders may be published under sub-section (2) of section 99 (d) and any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by rules.

Clause 104 of the Bill seeks to substitute new sections 53 to 55 in the Customs Act, 1962, sub-section (1) of the proposed section 54 empowers the Central Board of Excise and Customs to make regulations to provide form in which the bill of transshipment shall be presented to the proper officer under said sub-section. Sub-section (3) of the said section 54 empowers the said Board to make regulations to provide conditions subject to which the proper officer may allow the goods to be transhipped without payment of duty under the sub-section.

Clause 105 of the Bill seeks to insert new Chapter XIVA in the Customs Act, 1962. Sub-section (1) of section 127B of the proposed Chapter XIVA empowers the Central Government to make rules to specify the form and manner for making application under that sub-section and other particulars which that application shall contain and the fees to be accompanied with such application. Sub-section (1) of section 127D of the said Chapter empowers the Central Government to make rules to specify the manner in which any property may be provisionally attached under that sub-section. Section 127G of the said Chapter empowers the Central Government to make rules to specify fee to be paid for obtaining copies under that sub-section. Proviso to said section 127G empowers the Central Government to make rules to specify the fees to be paid to obtain certified copy under that proviso.

Clause 113 of the Bill seeks to insert new Chapter V in the Central Excise Act, 1944. Sub-section (1) of section 32E empowers the Central Government to make rules to provide the form and manner of making application under that sub-section and other particulars which that application may contain and the fees to be accompanied with such application. The said sub-section (1) also empowers the Central Government to make rules to prescribe the manner in which the applicant is required to file monthly return before making application under that sub-section. Sub-section (1) of section 32G of the said Chapter empowers the Central Government to make rules to provide the manner in which any property may be provisionally attached under that sub-section. Section 32J of the said Chapter empowers the Central Government to make rules to prescribe the fee to be paid for obtaining copies under that sub-section. Proviso to said section 32J empowers the

Central Government to make rules to prescribe the fees to be paid for obtaining a certified copy under that proviso.

Clause 119 of the Bill seeks to amend the Finance Act, 1994. Sub-clause (1) of the said clause proposes to substitute new section 66 for existing section 66 of the said Act. Sub-sections (1), (2), (3) (4) and (5) of the proposed new section 66 empowers the Central Government to make rules to provide the manner of collection of service tax levied under those sub-sections. Clause (4) of the said clause proposes to substitute new sections 68 to 71 for the existing sections 68 to 71 of the Finance Act, 1994. Sub-section (1) of the proposed section 68 empowers Central Government to make rules to provide the manner in which and the period within which the service tax shall be paid under that sub-section. Sub-section (2) of the said section 68 empowers the Central Government to make rules to provide the manner of payment of service tax under that sub-section. The proposed section 69 empowers the Central Government to make rules to provide the form in which application shall be made under that section for registration. The proposed section 70 empowers the Central Government to make rules to

provide form and manner in which and the frequency at which a return shall be furnished or caused to be furnished under that section. Sub-clause (7) of the said clause 119 proposes to substitute new section 75 for the existing section 75 of the Finance Act, 1994. The proposed section 75 empowers Central Government to prescribe period to credit the tax or any part there of to the account of Central Government for the proposes of that section. Sub-clause (12) of the proposed clause 119 proposes to substitute new sub-section (2) for existing sub-section (2) of section 94 of the Finance Act, 1994. Clauses (a) to (f) of the proposed sub-section (2) enumerates the details regarding which in particular the Central Government may make rules.

The matters in respect of which notification may be issued or rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

The delegation of legislative power is, therefore, of a normal character.

S. GOPALAN,
Secretary-General.

