

THE COMPANIES (PROFITS) SURTAX ACT, 1964

ACT NO. 7 OF 1964

[2nd May, 1964.]

An Act to impose a special tax on the profits of certain companies.

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:-

1.

Short title and extent.

1.Short title and extent. (1) This Act may be called the Companies (Profits) Surtax Act, 1964.

(2) It extends to the whole of India.

2.

Definitions.

2.Definitions. In this Act, unless the context otherwise requires,-

1[(1) "Advance surtax" means the surtax payable under section 7A;]

2[(1A)] assessee " means a person by whom surtax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his chargeable profits or

,of the amount of refund due to him or  
of the chargeable  
profits of any other person in  
respect of which he is  
assessable or of the amount of refund  
due to such other  
person;

(2) assessment " includes re-assessment  
;

(3)" assessment year " means the period  
of twelve months  
commencing on the 1st day of April, every  
year;

(4)" Board " means the Central  
Board of Direct Taxes  
constituted under the Central Boards of  
Revenue Act, 1963 ;  
(54 of 1963).

(5)" chargeable profits " means the  
total income of an  
assessee computed under the Income-tax  
Act, 1961 (43 of  
1961) for any previous year or years, as  
the case may be, and  
adjusted in accordance with the  
provisions of the First  
Schedule ;

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

(7) prescribed " means prescribed by  
rules made under this  
Act;

1[(7A) "regular assessment" means an  
assessment made under  
section 6;"]

(8) statutory deduction " means an  
amount equal to  
1[fifteen per cent.] of the capital  
of the company as  
computed in accordance with the  
provisions of the Second  
Schedule, or an amount of two hundred  
thousand rupees, which-  
ever is greater:

Provided that where the previous year  
is longer or shorter

than a period of twelve months, the  
aforesaid amount of

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3 Subs. by Act 66 of 1976, S. 29 (w.e.f.  
1.4.1977).

1 Re-numbered and ins. by Act 16 of 1981, S. 35  
(w.e.f. 1.4.1981).

2 Re-lettered by s. 35, ibid. (w.e.f. 1.4.1981)

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1272

1[fifteen per cent.] or, as the case may  
be, of two hundred  
thousand rupees shall be increased or  
decreased propor-  
tionately :

Provided further that where a company has  
different previous  
years in respect of its income,  
profits and gains, the  
aforesaid increase or decrease, as the  
case may be, shall be  
calculated with reference to the length  
of the previous year  
of the longest duration; and

(9)all other words and expressions  
used herein but not  
defined and defined in the Income-tax  
Act shall have the  
meanings respectively assigned to them in  
that Act.

3.

Tax authorities.

2[3.(1) Tax authorities. The income-tax  
authorities specified  
in section 116 of the come-tax Act shall be the  
authorities for the

purpose of this the Act and every such authority shall exercise the power and perform the functions of a tax authority under this Act in respect of any company, and for this purpose his jurisdiction under this Act shall be the same as he has under the Income-Tax Act by virtue of orders or directions issued under section 120 of that Act (Including orders or directions assigning concurrent jurisdiction) or under any other provision of that Act.

(2) The Board may, from time to time, issue such orders, instructions and directions to other tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions." ]

4.

Charge of tax.

4.Charge of tax. Subject to the provisions contained in this Act, there shall be charged on every company for every assessment year commencing on and from the first day of April, 1964, 3["but before the

first day of April, 1988"] a tax (in-this Act referred to as the surtax) in respect of so much of its chargeable profits of the previous year or previous years, as the case may be, as exceed the statutory deduction, at the rate or rates specified in the Third Schedule.

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1 Ins. by Act 19 of 1970, s. 39.

2 Subs. by Act 20 of 1967, s. 36, for "and Income-tax 'Officer" (w.e.f. 1.4.1967).

3 Subs. by s. 36 ibid, for "same as that he has" (w.e.f. 1.4.1967).

4 Subs. by Act 66 of 1976, S. 29 (w.e.f. 1-4-1977)

5 Subs. by Act 29 of 1977, S. 39 & Sch. V (w.e.f. 10.7. 1978).

3 Ins. by Act 23 of 1986, S. 47 (w.e.f. 1.4. 1988).

2 Subs. by Act 4 of 1988, S. 188 (w.e.f 1.4.1988).

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1273

5.

Return of chargeable profit.

5. Return of chargeable profit. (1) In the case of every company whose chargeable profits assessable under this Act exceeded during the previous year the amount of. statutory deduction, its

principal officer, or where in the case of a non-resident company any person has been treated as its agent under section 163 of the Income-tax Act, such person, shall furnish a return of the chargeable profits of the company during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, before the 30th day of September of the assessment year:

Provided that on an application made in this behalf, the Income-tax Officer may, in his discretion, extend the date for the furnishing of the return.

(2) In the case of any company which in the Income-tax Officer's opinion is assessable under this Act, the Income-tax Officer may, before the end of the relevant assessment year, serve a notice upon its principal officer, or where in the case of a non-resident company any person has been treated as its agent under section 163 of the Income-tax Act, upon such person, requiring him to furnish within thirty days from the date of service of the notice a return of the chargeable profits of the company during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that on an application made in this behalf, the Income-tax Officer may, in his discretion, extend the date for the furnishing of the return.

(3) Any assessee who has not furnished a return during the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2) discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

6.

Assessment.

6.Assessment. (1) For the purposes of making an assessment under this Act, the Income-tax Officer may serve on any, person who has furnished a return under sub-section (1) of section 5 or upon whom a notice has been served under 'sub-section (2) of section 5 (whether a return has been furnished or not) a notice requiring him on a date therein to be specified, to produce or cause to be produced such accounts or documents or evidence as the Income-tax officer may require for the purposes of this Act and may from time to time serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

1274

(2) The Income-tax Officer, after considering such accounts, documents or evidence, if any, as he has obtained under subsection (1) and after taking into account any relevant material which he has gathered, shall, by an order in writing, assess the chargeable profits and the amount of the surtax payable on the basis of such assessment.

7.

Provisional assessment.

7. Provisional assessment. (1) The Income-tax Officer, before proceeding to make an assessment under section 6 (in this section referred to as the regular assessment) may, at any time after the expiry of the period allowed under sub-section (1) or sub-section (2) of section 5 for the furnishing of the return and whether the return has or has not been furnished, proceed to make in a summary manner a provisional assessment of the chargeable profits and the amount of the surtax payable thereon.

(2) Before making such provisional assessment, the Income-tax Officer shall give notice in the prescribed form to the person on whom the provisional assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of the service of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of the said fourteen days from the date of service of the notice referred to in sub-section (2), or earlier, if the assessee agrees to the proposed provisional assessment, the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of the assessment to the assessee:

Provided that assent to the amount of the provisional assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) There shall be no right of appeal against a provisional assessment made under this section,



(5) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under this section shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

1 [7A. Advance payment of surtax. (1) In this section,-

(a) "chargeable amount", in relation to any previous year, means so much of the chargeable profits of the previous year as exceed the statutory deduction;

(b) "current chargeable amount", in relation to the advance surtax payable by a company during any financial year, means the chargeable amount of the company of the, period which would be the previous year for the assessment year immediately following that financial year.

(2) Surtax shall be payable, in accordance' with the provisions of--this section, in advance during the financial year in respect of the chargeable amount of the period which would be the previous year for the immediately following assessment year.

(3) The amount of advance surtax payable by an assessee in the financial year shall be computed as follows:-

(a) the chargeable amount of the latest previous year in respect of which the assessee has been assessed by way of

regular assessment shall first be ascertained ;

(b) in a case where the chargeable amount of the latest previous year [being a year later than the previous year referred to in clause (a) on the basis of which a provisional assessment has been made under section 7. exceeds the chargeable amount referred to in clause, (a), the, chargeable, amount referred to in clause (a) shall be substituted by the chargeable amount on the basis of which such provisional assessment has been made;

(c) surtax shall be calculated on the chargeable amount referred to in clause (a) or, as the case may be, in clause (b), at the rates specified in the Third Schedule.

(4) Subject to the provisions of this section, advance surtax shall be payable in three equal instalments on the following dates during the financial year, namely:-

(a) the 15th day of June, the 15th day of September and the 15th day of December, in the case of an assessee

whose chargeable amount to the extent of 75 per cent. thereof or more is derived from a source or sources for which the previous year (relevant to the assessment year next following the financial year aforesaid) ends on or before the 31st day of December;

(b) the 15th day of September, the 15th day of December and the 15th day of March, in any other case.

Provided that where, in respect of any class of assessee, the Board has, in exercise of the powers conferred by the proviso to sub-section (1) of section 211 of the Income-tax Act, authorised the payment of the last instalment of advance tax on the 15th day of March during the financial year instead of on the 15th day of December, the last instalment of advance surtax in the case of such assessee shall also be payable on the 15th day of March during the financial year.

(5) Every company shall, in each financial year, on or before the date on which the first instalment, or where it has not previously been assessed by way of regular assessment under this Act, on or before the date on which the last instalment, of advance surtax is due in its case under sub-section (4), if it is likely to have any current chargeable amount, send to the Income-tax Officer,--

(a) where it has been previously assessed by way of regular assessment under this Act, a statement of advance surtax payable by it computed in the manner laid down in sub-section (3), or

(b) where it has not previously been assessed by way of regular assessment under this Act, an estimate of--

(i) the current chargeable amount and

(ii) the advance surtax payable by it on the amount specified in (i) above calculated in the manner laid down in sub-section (3),

and shall pay such amount of advance surtax,--

(I) in a case falling under clause (a), as accords with the statement in equal instalments on the dates applicable in its case under sub-section (4); and

(II) in a case falling under clause (b), as accords with the estimate in equal instalments on such of the dates applicable in its case as have not expired, or in one sum if only the last of such dates has not expired.

(6) Where a company which is required to send a statement under clause (a) of sub-section (5) estimates on or before the date on which the first instalment of advance surtax is due in its case under sub-section (4) that, by reason of its current chargeable amount being likely to be less than the chargeable amount on which advance surtax is payable by it under subsection (5) or for any other reason, the amount of advance surtax computed in the manner laid down in sub-section (3) on the current chargeable amount would be less than the amount of advance surtax payable by it under sub-section (5), it may send to the Income-tax Officer, in lieu of such statement, an estimate of-

(i) the current chargeable amount, and

(ii) the advance surtax payable by it on the current chargeable amount calculated in the manner laid down in sub-section (3),

and shall pay such amount of advance surtax as accords with its estimate in equal instalments on the dates applicable in its case under sub-section (4).

(7) Where a company which has sent a statement under clause (a)

of subsection (5) estimates on or before the date on which the last instalment of advance surtax is due in its case that, by reason of its current chargeable amount being likely to be less than the chargeable amount on which advance surtax is payable by it under sub-section (5) or for any other reason, the amount of advance surtax computed in the manner laid down in sub-section (3) on the current chargeable amount would be less than the amount of advance surtax payable by it under sub-section (5), it may, at its option, send to the Income-tax Officer an estimate of--

(i) the current chargeable amount, and

(ii) the advance surtax payable by it on the current chargeable amount calculated in the manner laid down in sub-section (3),

and shall pay such amount of advance surtax as accords with its estimate in equal instalments on such of the dates applicable in its case under subsection (4) as have not expired, or in one sum if only the last of such dates has not expired.

(8) In the case of any company which is liable to pay advance surtax under subsection (5) or sub-section (6) or, as the case may be, sub-section (7), if, by reason of the current chargeable amount being likely to be greater than the chargeable amount on which the advance surtax so payable by it has been computed or for any other reason, the amount of advance surtax computed in the manner laid down in sub-section (3) on the current chargeable amount (which shall be estimated by the company) exceeds the amount of advance surtax so payable by it by more than twenty per cent. of the latter amount, it shall, on or before the date on which the last instalment of advance surtax is

payable by it, send to the Income-tax Officer an estimate of-

(i) the current chargeable amount, and  
(ii) the advance surtax payable by it on the current chargeable amount calculated in the manner laid down in sub-section (3),

and shall pay such amount of advance surtax as accords with its estimate on such of the dates applicable in its case under sub-section (4) as have not expired, by instalment- which may be revised according to sub-section (9):

Provided that where in respect of any company the Commissioner has, in exercise of the powers conferred by the first proviso to sub-section (4) of section 209A, or the first proviso to sub-section (3A) of section 212, of the Income-tax Act, extended the date for furnishing the estimate referred to in the said sub-section (4) or, as the case may be, the said sub-section (3A) and the company has paid the advance surtax which it is liable to pay under sub-section (5) or sub-section (6) or, as the case may be, sub-section (7) on or before the date on which the last instalment of advance surtax is due in its case, the company shall pay, on or before the date as so extended, the amount by which the advance surtax already paid by It falls short of the advance surtax payable in accordance with its estimate.

(9) The company may send a revised estimate of the, advance surtax payable by it on or before any one of the dates specified in sub-section (4) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(10) Every statement or estimate under this section shall be sent in the prescribed form and verified in the prescribed manner.

7C.

Interest payable by assessee.

7C. Interest payable by assessee. (1)  
Where, in any financial year, a company has paid advance surtax under section 7A on the basis of its own estimate (including revised estimate), and the advance surtax so paid is less than eighty-three, and one-third per cent of the assessed surtax, simple interest at the rate of 2[ fifteen per cent.] per annum from the 1st day of April next following the said financial year up to the date of the regular assessment shall be payable by the company upon the amount by which the advance surtax so paid falls short of the assessed surtax,

(2) Where, on making the regular assessment, the Income-tax Officer finds-

(a) that any such company as is referred to in clause (a) of sub-section (5) of section 7A has not sent the statement referred to in that clause or the estimate in lieu of such statement referred to in sub-section (6) of that section; or

(b) that any such company as is referred to in clause (b) of sub-section (5) of section 7A has not sent the estimate referred to in that clause,

simple interest at the rate of [fifteen per cent] 2 per annum from

the 1st day of April next following the financial year, in which the advance surtax was payable in accordance with the said sub-section (5) or sub-section (6) up to the date of the regular assessment shall be payable by the company upon the amount equal to the assessed surtax.

(3) Where, on making the regular assessment, the Income-tax Officer finds that any company which is required, to send an estimate under sub-section (8) of section 7A has not sent the, estimate referred to therein, simple interest at the rate of [fifteen per cent]<sup>2</sup> per annum from the 1st day of April next following the financial year in which the advance surtax was payable in accordance with the 'said sub-section (8) to the date of the regular assessment shall be payable by the company upon the amount by which the advance surtax paid by, it falls short of the assessed surtax.

(4) Notwithstanding anything contained in the foregoing sub-sections, where provisional assessment is made under section 7-

(i) interest shall be calculated in accordance with the provisions of sub-section (1) or subsection (2) or, as the case may be, sub-section (3) up to the date on which the surtax provisionally assessed is paid; and

(ii) thereafter interest shall be calculated at the rate of [fifteen per cent]<sup>2</sup> per annum on the amount by which the surtax provisionally assessed falls short of the assessed surtax.

(5) In such cases and under such circumstances as may be, prescribed, the Income-tax Officer may reduce or waive the interest



payable by the company under this section.

(6) Where, as a result of an order under section 11, or section 12, or section 13, or section 17, or section 18 read with section 260 or section 262 of the Income-tax Act. the amount on which interest was payable under this section 'has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(7) In this section and section 9A, "assessed surtax" mean.,; the surtax determined on the basis of the regular assessment without making any deduction therefrom.

7D.

Interest payable by assessee in case of underestimate, etc.

7D. Interest payable by assessee in case of underestimate, etc. where, on making the regular assessment, the Income-tax Officer finds that any company has under section 7A underestimated the advance surtax payable by it and thereby reduced the amount payable in either of the first two instalments, he may direct that the company shall pay simple interest at 2[fifteen per cent.] per annum for the period during which the payment was deficient, on the difference between the amount paid in each such instalment and the amount which should have been paid, having regard to the aggregate advance surtax actually paid during the year.

Explanation.-For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become, due fifteen days after the expiry of the said six months."]

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1. Ins. by Act 16 of 1981, s.36 (w.e.f. 1-4-1981).

2. subs. by Act 67 of 1984, s.77 (w.e.f. 1-10-1984).

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1275

8.

Profits escaping assessment.

8. Profits escaping assessment. If-

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of the assessee to make a return under section 5 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for any assessment year, chargeable profits for that year have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of

information in his possession reason  
to believe that  
chargeable profits assessable for any  
assessment year have  
escaped assessment or have been under-  
assessed or assessed at  
too low a rate or have been the subject  
of excessive relief  
under this Act,

he may, in cases falling under clause (a) at any  
time, and in cases  
falling under clause (b) at any time within four  
years of the end of  
that assessment year, serve on the assessee a  
notice containing all or  
any of the requirements which may be included  
in a notice under  
section 5, and may proceed to assess or re-assess  
the amount charge-  
able to surtax, and the provisions of this Act  
shall, so far as may  
be, apply as if the notice were a notice issued  
under that section.

9.

Penalties.

9. Penalties. If the Income-tax, Officer, in  
the course of any  
proceedings under this Act, is satisfied that any  
person has, without  
reasonable cause, failed to furnish 'the return  
required under section  
5, or to produce or cause to be produced the  
accounts, documents or  
other evidence required by the Income-tax Officer  
under sub-section  
(1) of section 6, or has concealed the  
particulars of the chargeable  
profits or has furnished inaccurate particulars  
of such profits, he  
may direct that such person shall pay, by way of  
penalty, in addition  
to the amount of surtax payable, a sum not  
exceeding-

(a) where the person has failed to  
furnish the return

required under section 5, the amount of  
1["surtax chargeable  
under the Provisions of this Act."];

(b) in any other case, the amount of  
surtax which would  
have been avoided if the return made  
had been accepted as  
correct:

Provided that the Income-tax Officer shall  
not impose any penalty  
under this section without the previous authority  
of the Inspecting  
Assistant Commissioner.

9A.

False estimate of, or failure to pay, advance  
surtax.

2[9A. False estimate of, or failure to pay,  
advance surtax. (1)

If the Income-tax Officer, in the course of  
any proceedings in  
connection with the regular assessment for any  
assessment year, is  
satisfied that any assessee-

(a) has furnished under clause (a) of  
sub-section (5) of  
section 7A a statement of advance surtax  
payable by him which  
he knew or had reason to believe to be  
untrue, or

(b) has without reasonable cause  
failed to furnish a  
statement of the advance surtax payable  
by him in accordance  
with the provisions of clause (a) of  
sub-section (5) of  
section 7A,

he may direct that such assessee shall,  
in addition to the  
amount of surtax, if any, payable by  
him, pay by way of  
penalty a sum-,

(i) which, in the case referred to in clause (a), shall not be less than ten per cent. but shall not exceed one and a half times the amount by which the surtax actually paid during the financial year immediately preceding the assessment year under the provisions of section 7A falls short of--

(1) eighty-three and one-third percent of the assessed surtax, or

(2) the amount which would have been payable by way of advance surtax if the assessee had furnished a correct and complete statement in accordance with the provisions of clause (a) of sub-section (5) of section 7A,

whichever is less;

(ii) which, in the case referred to in clause (b), shall not be less than ten per cent. but shall not exceed one and a half times of eighty-three and one-third per cent, of the assessed surtax.

(2) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment for any assessment year, is satisfied that any assessee-

(a) has furnished under clause (b) of sub-section (5) or sub-section (6) or sub-section (7) or sub-section (9) of section 7A, an estimate of the advance surtax payable by him which he knew or had reason to believe to be untrue, or

(b) has furnished under sub-section (8) of section 7A, an estimate of the advance surtax payable by him which he knew or had reason to believe to be untrue, or

(c) has without reasonable cause failed to furnish an estimate of the advance surtax payable by him in accordance with the provisions of clause (b) of sub-section (5) of section 7A, or

(d) has without reasonable cause failed to furnish an estimate of advance surtax payable by him in accordance with the provisions of sub-section (8) of section 7A,

he may direct that such assessee shall, in addition to the amount of surtax, if any, payable by him, pay by way of penalty a sum-

(i) which, in the case referred to in clause (a), shall not be less than ten per cent. but shall not exceed one and a half times the amount by which the surtax actually paid during the financial year immediately preceding the assessment year under the provisions of section 7A falls short of-

(1) eighty-three and one-third per cent. of the assessed surtax, or

(2) where a statement under clause (a) of sub-section (5) of section 7A was furnished by the assessee, the amount payable under such statement,

whichever is less;

(ii) which, in the case referred to in clause (b), shall not be less than ten per cent. but shall not exceed one and a half times the amount by which the surtax actually paid

during the financial year  
immediately preceding the  
assessment year under the provisions of  
section 7A falls  
short of eighty-three and one-third per  
cent. of the assessed  
surtax;

(iii) which, in the case referred to in  
clause (c), shall not  
be less than ten per cent. but shall  
not exceed one and a  
half times of eighty-three and one-  
third per cent. of the  
assessed surtax; and

(iv) which, in the case referred to in clause  
(d), shall not be  
less than ten per cent. but shall not exceed one  
and a half times the  
amount of surtax payable in accordance with a  
statement under clause  
(a) or an estimate under clause (b) of sub-  
section (5) of section 7A  
or an estimate in lieu of a statement under sub-  
section (6) of that  
section falls short of eighty-three and one-  
third per cent. of the  
assessed surtax.

Explanation.—Where the Commissioner has,  
in exercise of the  
powers conferred by the first proviso to sub-  
section (4) of section  
209A, or the first proviso to sub-section (3A) of  
section 212, of the  
Income-tax Act, extended the date for furnishing  
the estimate referred  
to in the said sub-section (4) or, as the case  
may be, the said sub-  
section (3A) and the date so extended falls  
beyond the financial year  
immediately preceding the assessment year, then,  
the amount of surtax  
paid by the assessee on or before the date so  
extended shall, for the  
purposes of clause (ii) of subsection (2) also be  
regarded as surtax  
actual paid during that financial year." ]

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1. Subs. by Act 26 of 1974, s.20  
(retrospectively).

2. Ins. by Act 16 of 1981, s.37 (w.e.f. 1-4-  
1981.)

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1276

10.

Opportunity of being heard.

10.Opportunity of being heard. No order  
imposing a penalty under  
section 9 2[ or section 9A] shall be made unless  
the assessee has been  
given a reasonable opportunity of being heard.

11.

Appeals to the Appellate Assistant Commissioner.

11.Appeals to the Appellate Assistant  
Commissioner. (1) Any  
person objecting to the amount of surtax for  
which he is liable as  
assessed by the Income-tax Officer or denying  
his liability to be  
assessed under this Act, or objecting to any  
penalty or fine imposed  
by the Income-Tax Officer, 3["or objecting to the  
interest levied by  
the Income-Tax Officer under section 7D,"] or to  
the amount allowed by  
the Income-tax Officer by way of any relief under  
any provisions of  
this Act, or to any refusal by the Income-tax  
officer to grant relief  
or to an order of rectification or amendment  
having the effect of  
enhancing the assessment or reducing the  
refund, or to an order



refusing to allow the claim made by the assessee  
for a rectification  
under section 13 or amendment under section 14  
may appeal to the  
1[Commissioners [Appeals]]

(2) Every appeal shall be in the prescribed  
form and shall be  
verified in the prescribed manner.

(3) An appeal shall be presented within  
thirty days of the  
following date, that is to say-

(a) where the appeal relates to  
assessment or penalty or  
fine, the date of service of the notice  
of demand relating to  
the assessment or penalty or fine, or

(b) in any other case, the date on  
which the intimation of  
the order sought to be appealed against  
is served:

Provided that the 1[Commissioners [Appeals]]  
may admit an appeal  
after the expiration of the said period if he is  
satisfied that the  
appellant had sufficient cause for not  
presenting it within that  
period.

(4) The 1[Commissioner (Appeals)] shall hear  
and determine the  
appeal and, subject to the provisions of this Act,  
pass such orders as  
he thinks fit and such orders may include an  
order enhancing the  
assessment or penalty:

Provided that an order enhancing the  
assessment or penalty shall  
not be made unless the person affected thereby  
has been given a  
reasonable opportunity of showing cause against  
such enhancement.

(5) The procedure to be adopted in the  
hearing and determination  
of the appeals shall, with any necessary  
modification, be in  
accordance with the procedure applicable in  
relation to income-tax.

11A.

Transfer of certain pending appeals.

1[11A. Transfer of certain pending appeals.  
Every appeal under  
this Act which is pending immediately before the  
appointed day before  
an Appellate Assistant commissioner or a  
Commissioner 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  
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.-In this section, "appointed  
day" means the date  
appointed under section 39 of the Finance (No. 2)  
Act, 1977.]

12.

Appeals to Appellate Tribunal.

12.Appeals to Appellate Tribunal. (1) any  
assessee aggrieved by  
an order passed by a Commissioner under section  
16, or an order passed  
by 1[a Commissioner (Appeals)]

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1. Subs. & Ins. by Act 29 of 1977, s.39 &  
Sch. V, (w.e.f. 10-7-  
1978) .

2. Ins. by Act 16 of 1981, s.38 (w.e.f. 1-4-  
1981) .

3. Ins. by s. 39, *ibid.* (w.e.f. 1-4-1981).

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1277

under any provision of this Act, may appeal to the Appellate Tribunal against such order.

(2) The Commissioner may, if he objects to any order passed by the 2[Commissioner (Appeals)] under any provision of this Act, direct the Income-tax Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filled within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(4) The Income-tax Officer, or the assessee, as the case may be, on receipt of notice that an appeal against the order of the 2[Commissioner (Appeals)] has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file, a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the 2[Commissioner Appeals)] and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the

filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and, shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by 1[a fee of 3[two hundred rupees].

(7) Subject to the provisions of this Act, in hearing and making an order on any appeal under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing and making an order on any appeal under the Income-tax Act.

13.

Rectification of mistakes.

13.Rectification of mistakes. (1) With a view to rectifying any mistake apparent from the record, the Commissioner, the Income-tax Officer, the 2[Commissioner (Appeals)] and the Appellate Tribunal may, its, own motion or on an application by the assessee in this behalf amend any order passed by him or it in any proceeding under this Act 4["within four years from the end of the financial year in which such order was passed."]

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1. Subs. by Act 42 of 1970, s.72, for "a fee of one hundred rupees" (w.e.f. 1-4-1971.)

2. Subs. by Act 29 of 1977, s.39 & sch. V  
(w.e.f. 10-7-1978).

3. Subs. by Act 16 of 1981, s.40 (w.e.f. 1-6-  
1981).

4. Subs. by Act 67 of 1984, s.78 (w.e.f. 1-  
10-1984).

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1278

(2) An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(3) Where an amendment is made under this section, the order shall be passed in writing by the authority concerned.

(4) Subject to the other provisions of this Act, where any such amendment has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(5) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable.

14.

Other amendments.

14. Other amendments. Where as a result of any order made under 1[section 154, 155, 250, 254, 260, 262, 263 or 264] of the Income-tax Act, it is necessary to recompute the chargeable profits determined in any assessment under this Act, the Income-tax Officer may proceed to recompute the chargeable profits, and determine the surtax payable or refundable on the basis of such recomputation and make the necessary amendment and the provisions of section 13 shall, so far as may be, apply thereto, the period of four years specified in sub-section (1) of that section being reckoned 2["from the end of the financial year in which the order under the aforesaid sections of the Income-tax Act was passed"]

15.

Surtax deductible in computing distributable income under Income-tax Act.

15. Surtax deductible in computing distributable income under Income-tax Act. Notwithstanding anything contained in clause (i) of section 109 of the Income-tax Act, in computing the distributable income of a company for the purposes of Chapter XIX of that Act, the surtax payable by the company any for any assessment year shall be deductible from the total income of the company assessable for that assessment year.

16.

Revision of orders prejudicial to revenue.

16. Revision of orders prejudicial to revenue. (1) The Commissioner may call for and examine the record of any proceeding

under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

3["Explanation.--For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Income-Tax Officer shall include an order passed by the Inspecting Assistant Commissioner in exercise of the powers or in performance of the functions of an Income-tax Officer conferred on, or assigned to, him under clause (a) of sub-section (1) of section 125 or under sub-section (1) of section 125A of the Income-tax Act as applied by section 18 of this Act."]

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1. Subs. by Act 42 of 1970, s.73, for "section 154 or section 155" (w.e.f. 1-4-1971).

2. Subs. by Act 67 of 1984, s.79 (w.e.f. 1-10-1984).

3. Ins. by s.80, ibid (w.e.f. 1-10-1984).  
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1279

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2["(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed."]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this 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, the High Court or the Supreme Court.

Explanation.-In computing the period of limitation for the purposes of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

17.

Revision of orders by Commissioner.

17.Revision of orders by Commissioner. (1)  
The Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act which has been taken by an Income-tax Officer subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this



section by the assessee, the application shall be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within, that period admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases-

1["(a) where an appeal against the order lies to the Commissioner (Appeals) but has not been made and the time within which such appeal may be made has not expired, or the assessee has not waived his right of appeal; or

(b) where the order has been made the subject of an appeal to the Commissioner (Appeals).]

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1. Omitted & subs. by Act 29 of 1977, s.39 & sch. V, (w.e.f. 10-7-1978.)

2. Subs. by Act 67 of 1984, s.80 (w.e.f. 1-10-1984).

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1280

(5) Every application by an assessee for revision under this

section shall be accompanied by a fee of twenty-five rupees.

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section be deemed not to be an order prejudicial to the assessee.

18.

Application of provisions of Income-tax Act.

18. Application of provisions of Income-tax Act. The provisions of the following sections and Schedules of the Income-tax Act and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with such modifications, if any, as may be prescribed, as if the said provisions and the rules referred to surtax instead of to income-tax 2\* \* \* :--

3[(44)]18 4[116, 117, 118, 119, 120, 129], 131, 132, 132A  
5[, 132 B] 133 to 136 (both inclusive) ],  
138, 140, 156, 160,  
161, 162, 163, 166, 167, 170, 173, 175,  
176, 178, 179, 6[218  
to 229] (both inclusive), 231, 232, 233,  
237 to 242 (both  
inclusive), 244, 245, 254 to 262 (both  
inclusive), 265, 266,  
268, 269, 281, 5[281B] 282, 284, 5[287,  
288, 288A, 288B, 289  
to 293 (both inclusive)], the Second  
Schedule and the Third  
Schedule:

Provided that references in the said provisions and the rules to the " assessee " shall be construed as references to an assessee as defined in this Act.

19.

Income-tax papers to be available for the purpose of this Act.

19. Income-tax papers to be available for the purpose of this Act.

(1) Notwithstanding anything contained in the Income-tax Act, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information ' contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Income-tax Act.

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2 The words "and super-tax" omitted by Act 10 of 1965, s. 74 (w.e.f. 1-4-1965).

7 Subs. by Act 20 of 1967, s. 36, for "287 to 293 (both inclusive)" (w.e.f. 14-1967).

5 Ins. by Act 41 of 1975, s. 124 (w.e.f. 1-10-1975).

1 Explanation 1 Omitted by Act 29 of 1977, s.39 and Sch. V (w.e.f. 10-7-1978).

6 Subs. by Act 16 of 1981, s.41, for "220 to 229" (w. e. f. 1-4-1981).

2 Subs. by Act 4 of 1988, s.189, for "2(43B) and (44)" (w.e.f. 1-4-1989).

4. Subs. by s.189 ibid., for "118, 125, 125A, 129, 139, 130A (w.e.-f. 1-4-1988).

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1281

20.

Failure to deliver returns, etc.

20.Failure to deliver returns, etc. If any person fails without reasonable cause to furnish in due time any return, under sub-section (2) of section 5, or to produce, or cause to be produced, any accounts or documents, required to be produced under section 6, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to ten rupees for every day during which the default continues.

21.

False statements.

21.False statements. If a person makes in any return furnished under section 5, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

22.

Abatement of false returns, etc.

22. Abatement of false returns, etc. If a person makes or induces in any manner another person to make and deliver any account, statement or declaration relating to chargeable profits liable to surtax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

23.

Institution of proceedings and composition of offences.

23. Institution of proceedings and composition of offences. (1) A person shall not be proceeded against for an offence under section 20 or section 21 or section 22 or under the Indian Penal Code except at the instance of the Commissioner. (45 of 1860).

(2) The Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 20 or section 21 or section 22.

24.

Power to make exemption, etc., in relation to certain Union territories.

24. Power to make exemption, etc., in relation to certain Union territories. If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly or removing an difficulty that may arise as a result of the application of this Act to the Union territories of Dadra and Nagar Haveli, Goa, Dam and Diu

and Pondicherry, the Central Government may, by general or special order, made an exemption, reduction in rate or other modification in respect of surtax in favour of any class of assesseees or in regard to the whole or any part of the chargeable profits of any class of assesseees.

24A.

Agreement with foreign countries.

2["24A. Agreement with foreign countries.  
The Central Government may enter into an agreement with the Government of any country outside India-

(a)for the granting of relief in respect of chargeable profits on which have been paid both surtax under this Act and tax of a similar character or income-tax on such profits in that country , or

(b)) for the avoidance of double taxation of chargeable profit under this Act and under any law relating to the taxation of income or profits in force in that country, or

(c) for exchange of information for the prevention of evasion or avoidance of surtax chargeable under this Act or the chargeable under the corresponding law in force in that country or investigation of cases of such evasion or avoidance, or

(d)for recovery of tax under this Act and under any law

profits relating to the taxation of income or  
in force that  
country,

and may , by notification in the Official Gazette,  
make such provision  
as may be necessary for implementing the  
agreement. "]"

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1 Ins. by Act 15 of 1965, s. 22.

2 Subs. by Act 16 of 1972, s.57 (w.e.f. 1-4-  
1972).

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1282

24AA.

Power to make exemption, etc., in relation to  
participation in the  
business of prospecting for, extraction, etc., of  
mineral oils.

6["24AA. Power to make exemption, etc.,  
in relation to  
participation in the business of prospecting for,  
extraction, etc., of  
mineral oils. (1) If the Central Government is  
satisfied that it is  
necessary or expedient so to do in the public  
interest, it may, by  
notification in the Official Gazette, make in  
exemption, reduction in  
rate or other modification in respect of surtax in  
favour of any class  
of foreign companies specified in sub-section (2)  
or in regard to the  
whole or any part of the profits chargeable of  
such class of companies.

Explanation.-For the purposes, of this  
sub-section, "foreign

company" shall have the meaning assigned to it in clause (4) of section 80B of the Income-Tax Act.

(2) The foreign companies referred to in sub-section (1) are the following, namely:-

(a) foreign companies with whom the Central Government has entered into agreements for the association or participation of that Government or any person authorised by that Government in any business consisting of the prospecting for or extraction or production of mineral oils; and

(b) foreign companies providing any services or facilities or supplying any ship, aircraft, machinery or plant (whether by way of sale or hire) in connection with any business consisting of the prospecting for or extraction or production of mineral oils carried on by that Government or any person specified by that Government in this behalf by notification in the Official Gazette.

(3) Every notification issued under this section shall be laid before each House of Parliament,

Explanation.-For the purposes of this section, "mineral oil" includes petroleum and natural gas.]

25.

Power to make rules.

25. Power to make rules. (1) The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.



(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 form in which returns under section 5 may be furnished and the manner in which they may be verified ;

(b) the form in which notice for making provisional assessment shall be given;

(c) the form in which appeals under section 11 or section 12 may be filed and the manner in which they shall be verified ;

2[(cc) the circumstances in which, the conditions subject to which and the manner in which, ' the 5[Commissioner (Appeals)] may permit an appellant to produce evidence which he did not produce or which he was-not allowed to Produce before the Income-tax Officer;]

(d) the procedure to be followed on applications for rectification of mistakes and applications for refunds ;

1[(dd) the procedure to be followed in calculating interest payable by assessees or interest payable by the Government to assessees under this Act, including the rounding off the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assessees may be ignored;]

(e) any other matter which by this Act is to be, or may be,

prescribed.

3[ (2A) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to Prejudicially affect the interests of assesseees."]

(3) The Central Government shall cause every rule made under this section 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 4[ or in two or more successive sessions] and if, before the expiry of the session 4["immediately following the session or the successive sessions aforesaid"] both Houses agree in

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1. Ins. by Act 42 of 1970, s.74 (w.e.f. 1-4-1971).

2. Ins. by Act 16 of 1972, s.58 (w.e.f. 1-4-1972).

3. Ins. by Act 26 of 1974, s.21.

4. Subs. by Act 41 of 1975, s. 125 (w.e.f. 1-4-1976).

5. Subs. by Act 29 of 1977, s.39 & Sch. V (w.e.f. 10-7-1978).

6. Ins. by Act 16 of 1981, s.42 (w.e.f. 1-4-1981).

1282A

making any modification in the rule or both Houses agree that the rule should not be made, that 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.

26.

Saving.

26.Saving. Nothing contained in this Act shall apply to any company Saving. which has no share capital.

1283

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[See section 2 (5)]

#### THE FIRST SCHEDULE

[See section 2 (5)]

#### RULES FOR COMPUTING THE CHARGEABLE PROFITS

In computing the chargeable profits of a previous year, the total income computed for that year under the Income-tax Act shall be adjusted as follows:-

1. Income, profits and gains and other sums falling within the

following clauses shall be excluded from such total income, namely:-

(i) any income chargeable under the Income-tax Act under the head "Capital gains";

(ii) any compensation or other payment as is referred to in clause (ii) of section 28 of the Income-tax Act ;

(iii) profits and gains of any business of life insurance;

(iv) any income referred to in subsection (2) of section 41 of the Income-tax Act;

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(vi) income chargeable under the Income-tax Act under the head "Interest on securities" derived from any security of the Central Government issued or declared to be income-tax free or from any security of a State Government issued income-tax free, the income-tax whereon is" payable by the State Government;

2[(vii) an amount Equal to fifty per cent. of the sum with reference to which a deduction is allowable to the company under the Provisions of section 80G of the Income-tax Act;]

(viii) income by way of dividends from an Indian company or a company which has made the prescribed arrangements, for the declaration and payment of dividends within. India ;

(ix) income by way royalties of royalties received from Government or a local authority or any Indian concern;

(x) in the case of a non-resident company which has not made the prescribed arrangements for the declaration and payment of dividends within India, its income by way of any interest or fees for rendering technical services received from Government or a local authority or any Indian concern;

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1 Cl. (v) omitted by Act 20 of 1967, a. 36 (w.e.f. 1-4-1968).

2 Subs. by s. 36, ibid., for cl. (vii) (w.e.f. 1-4-1968).

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1284

(xi) in the case of a banking company--

(a) any sum which during the previous year is transferred by it to a reserve fund under, sub-section (1) of section 17 of the Banking Companies Act, 1949 (10 of 1949) or is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of that Act, not exceeding the amount required under the aforesaid provisions to be so transferred or deposited, as the case may be, or

(b) any sum transferred by it during the previous year to any reserves in India including reserves not shown as such in its published balance-sheet in so far as the

sums transferred to such reserves  
are attributable to  
income chargeable to tax under the  
Income-tax Act and  
have not been allowed as a  
deduction in computing its  
total income under that Act and  
in so far as the  
aggregate of such sums does not  
exceed the highest 'of  
the aggregate of such sums, if  
any, so transferred  
during any one of the three years  
prior to the previous  
year,  
whichever is higher;

(xii) the amount of any  
deduction from the income-  
tax 1 \* \* \* chargeable on the  
total income allowed  
under the annual Finance Act in  
connection with export  
of any goods or merchandise out of  
India or the sale by  
a manufacturer of any articles to  
any person who exports  
them out of India.

2["Explanation.-Notwithstanding anything  
contained in any Clause  
of this rule, the amount of any income or profits  
and gains which is  
required to be excluded from the total income  
under that clause shall  
be only the amount of such income or profits and  
gains as computed in  
accordance with the provisions of the Income-tax  
Act (except Chapter  
VIA thereof), and in a case where any deduction  
is required to be  
allowed in respect of any such income or profits  
and gains under the  
said Chapter VIA, the amount of such income or  
profits and gains  
computed as aforesaid as reduced by the amount of  
such deduction."]

2. The balance of the total income-arrived  
at after making the  
exclusions mentioned in rule 1 shall be reduced  
by-

(i) the amount of income-tax 1 \* \* \* payable; by the company in respect of its total income under the provisions of the income-tax Act after making allowance for any relief, rebate or deduction in respect of income-tax 1 \* \* \* to which the company may be entitled under the provisions of the said Act or the annual Finance Act, and after excluding from such amount-

(a) the amount of income-tax 1 \* \* \*, if any, payable by the company in respect of any income referred

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1. The words "and super-tax" omitted by Act 10 of 1965, s.74 (w.e.f. 1-4-1965).

2. Added by Act 16 of 1981, s.43 (w.e.f. 1-4-1981).

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1284A

(The First Schedule.)

to in clause (i) or clause (ii) or clause (iii) or clause (viii) of rule 1 included in the total income;

1[(b) the amount of income-tax, if any, payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distributions of

dividends by it.

Explanation.-In this sub-clause, the expression " the relevant amount of distributions of dividends" has the meaning assigned to it in the Finance Act of the relevant year;]

2[(C) the amount of income-tax, if any, payable by the company under section 104 of the Income-tax Act.

Explanation.--In relation to the assessment year commencing on the 1st day of April, 1964, the reference in this sub-clause to " income-tax" shall be construed as a reference to " super-tax" ;]

(ii) in the case of a company which has been charged to tax in a country outside India on any portion of its income, profits and gains included in its total income as computed under the Income-tax Act, the tax actually paid in respect of such incomes, profits and gains in the said country in

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1. Subs. by Act 13 of 1966, s.43, for sub-clause (b) (w.e.f. 1-4-1966).

2. Ins. by s. 43, ibid. (retrospectively).

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1285



accordance with the laws in force in  
that country after  
allowance of every relief due under the  
said laws:

Provided that the aforesaid reduction  
shall not be allowed  
unless the assessee produces evidence  
of the fact of the  
payment of the aforesaid tax in that  
country.

3. The net amount of income calculated in  
accordance with rule  
2 shall be increased 2[by the amount of any  
expenditure"].incurred on  
account of commission, entertainment and  
advertisement, to the extent  
such expenditure, in the opinion of the Income-tax  
Officer, is exces-  
sive having regard to the circumstances of the  
case :

Provided that the previous authority of the  
Inspecting Assistant  
Commissioner is obtained for holding such  
expenditure to be excessive.

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[See section 2(8)]

## THE SECOND SCHEDULE

[See section 2(8)]

## RULES FOR COMPUTING THE CAPITAL OF A COMPANY FOR THE PURPOSES OF SURTAX

1. Subject to the other provisions  
contained in this Schedule,  
the capital of a company shall be the aggregate of  
the amounts, as on  
the first day of the previous year relevant to  
the assessment year,  
of-

(i) its paid-up share capital ;

(ii) its reserves, if any, created under the proviso (b) to clause (vib) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922(11 of 1922) or under 2["sub-section (4) of section 32A, or sub-section (3) of section 34"] of the Income-tax Act, 1961 ;(43 of 1961).

(iii) its other reserves as reduced by the amounts credited to such reserves as have been allowed as a deduction in computing the income of the company for the purposes of the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 ;

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1. Subs. by Act 21 of 1973, s.22 (w.e.f. 1-4-1974).

2. Subs & Omitted by Act 66 of 1976, s.29 (w.e.f. 1-4-77).

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1286.

2[1A.where a company has not made any credit in any account in its books as on the first day of the previous year relevant to the assessment year which is of the nature of item (8) or item (9) under the heading "CURRENT LIABILITIES AND PROVISIONS?" in the column relating to "LIABILITIES" in the "FORM OF BALANCE-SHEET", given in Part I of Schedule VI to the Companies Act, 1956, or where the Income-

tax Officer is of opinion that the amount credited in such account falls short of the amount which should have reasonably been credited by it, the amount of its capital as computed under rule I shall be reduced by the amount which has not been so credited or, as the case may be, the amount of such shortfall.

Explanation.-For the purposes of this rule, the amount of credit which should have reasonably been made by a company in relation to any account of the nature of item (9) aforesaid, means the amount of dividend declared or paid by the company, on or after the first day of the previous year relevant to the assessment year, for the previous year immediately preceding the first mentioned previous year.]

2. Where a company owns any assets the income from which in accordance with clause (iii) or clause (vi) or clause (viii) of rule 1 of the First Schedule is required to be excluded from its total income in computing its chargeable profits, the amount of its capital as computed under rule 1 of this Schedule shall be diminished by the cost to it of the said assets as on the first day of the previous year relevant to the assessment year in so far as such cost exceeds the aggregate of-

(i) any moneys borrowed [lxxx] and remaining outstanding as on the first day of the said previous year ; and

(ii) the amount of any fund, any surplus and any such reserve as is not to be taken into account in computing the capital under rule 1.

Explanation 1.-A paid-up. share capital or reserve brought into

existence by creating or increasing (by  
revaluation or otherwise) any  
book asset is not capital for computing the  
capital of a company for  
the purposes of this Act.

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1. Omitted by Act 66 of 1976, s.29 (w.e.f. 1-4-77).

2. Ins. by s.29 , ibid. (w.e.f. 1-4-75).

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1287

Explanation 2.-Any premium received in cash  
by the company on the  
issue of its shares standing to the credit of  
the share premium  
account shall be regarded as forming part of  
its paid-up share  
capital.

Explanation 3.-Where a company has different  
previous years in  
respect of its income, profits and gains, the  
computation of capital  
under rules 1, 2 and 3 shall be made with  
reference to the previous  
year which commenced first.

3. Where after the first day of the  
previous year relevant to  
the assessment year the capital of a company as  
computed in accordance  
with the foregoing rules of this Schedule is  
increased by any amount  
during that previous year on account of increase  
of paid-up share  
capital 4[" or is reduced by any amount on  
account of reduction of  
paid-up share capital,"] or repayment of any such  
moneys, such capital

shall be increased or reduced, as the case may be, by a sum which bears to that amount the same proportion as the number of days of 'the previous year during which, the increase or the reduction remained effective bears to the total number of days in that previous year.

4. Where a part of the income, profits and gains of a company is not includable in its total income as computed under the Income-tax Act, its capital shall be the sum ascertained in accordance with rules 1, 2 and 3, diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains.

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[See section 4]

#### 1[THE THIRD SCHEDULE

[See section 4]

#### RATES OF SURTAX

Surtax shall be charged on the amount (hereinafter referred to as the chargeable amount) by which the chargeable profits exceed the amount of the statutory deduction at the following rates, namely: -

(i) on so much of the chargeable amount as does not exceed five per cent. of the amount of capital as computed in accordance with the Second Schedule . 25 per cent. ;

(ii) on the balance, if any, of the chargeable amount .....  
3[40 per cent.]

3[Provided that where in the case of an Indian company or a company or company which has made the prescribed arrangements for the declaration and payment of dividends within India-

(i) which is such a company as is referred to in section 108 of the Income-tax Act, and

(ii) whose paid-up share capital (subscribed and paid for in cash) as on the last day of the previous year, is not less than twenty-five per cent, of the amount of the capital as computed under the Second Schedule to this Act,

the aggregate of-

(a) the amount of income-tax payable by the company in respect of its total income of the previous year under the provisions of the Income-tax Act after making allowance for any relief, rebate or deduction in respect of income-tax to which the company is entitled under the provisions of the said Act or the annual Finance Act; and

(b) the amount of surtax computed in accordance with the foregoing provisions of this Schedule,

exceeds the amount calculated at seventy per cent. of the total income of the company, the amount of such excess shall be deducted from the amount of surtax referred to in clause (b) above and the balance shall be the amount of the surtax payable by the company."]

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1. Subs. by Act 32 of 1971, s.38, for "the Third Schedule" (w.e.f. 1-4-1972).

2. Subs. by Act 21 of 1973, s.22 (w.e.f. 1-4-1974) .

3. Subs. & ins. by Act 20 of 1974, s.15 (w.e.f. 1-4-1975) .

4. Subs. by Act 66 of 1976, s. 29 (w.e.f. 1-4-1977) .

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