

FINANCE (NO. 2) ACT, 1965

15 of 1965

[11th September, 1965]

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SCHEDULE 1 :- SCHEDULE

FINANCE (NO. 2) ACT, 1965

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An Act further to amend certain laws relating to direct taxes, to provide for voluntary disclosure of income, to increase or modify

duties of customs on certain goods imported into India and to increase or modify and to impose duties of excise on certain goods produced or manufactured in India. Be it enacted by Parliament in the Sixteenth Year of the Republic of India as follows :--

1. Short title :-

This Act may be called The Finance (No. 2) Act, 1965.

2. Amendments of Act 43 of 1961 :-

Note.- These sections amend various provisions of Income tax Act, 1961 . All these amendments were then incorporated in that Act.]

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19. Amendment of Act 34 of 1953 :-

Note.- This section amends Estate Duty Act, 1953 . These amendments were then incorporated in that Act.]

20. Amendment of Act 27 of 1957 :-

Note.- This section amends WEALTH TAX ACT, 1957 . These amendments were then incorporated in that Act.]

21. Amendment of Act 18 of 1958 :-

Note. -This section amends Gift-tax Act, 1958. These amendments were then incorporated in that Act.]

22. Insertion of new Section 24A in Act 7 of 1964 :-

Note.- This section inserts new Section 24A relating to agreement with foreign countries, in Companies (Profits) Surtax Act, 1964 . It will be found incorporated in that Act.]

23. Exclusion of commuted value of pension from total income under the Indian Income-tax Act, 1922 :-

Notwithstanding anything contained in Income-tax Act, 1922, any sum due to or received by any person in commutation of pension shall not be included and shall be deemed never to have been including in computing the total income of such person under the provisions of that Act.

24. Voluntary disclosure of income :-

(1) Subject to the provisions of this section, where any person makes, on or after the 19th day of August, 1965, and before the 1st day of April, 1966, a declaration in accordance with sub-section (2) in respect of the amount representing income chargeable to tax under Income-tax Act, 1922 or Income tax Act, 1961 or any assessment year commencing on or before the 1st day of April, 1964-

(a) for which he has failed to furnish a return within the time allowed under S.22 of the Indian Income tax Act, 1922 or S.139 of the Income tax Act, 1961, 1961, or

(b) which he has failed to disclose in a return of income filed by him on or before the 19th day of August, 1965 under Income-tax Act, 1922 or Income tax Act, 1961 , or

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under either of the said Acts to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment, he shall, notwithstanding anything contained in the said Acts, be charged income-tax in accordance with sub-section (3) in respect of the amount so declared or if more than one declaration has been made by a person the aggregate of the amounts declared therein as reduced by any amount specified in any order made under sub-section (4), or, if such amount is altered by an order of the Board

under sub-section (6), then, such altered amount (hereafter in this section referred to as the voluntarily disclosed income) :

Provided that nothing in this section shall apply to the amount representing income assessable for any assessment year for which a notice under Section 22 or S.34 of the Indian Income-tax Act, 1922 or Section 139 or Section 148 of the Income tax Act, 1961 , has been served upon such person and the date for furnishing the return, whether fixed originally or on extension, falls beyond the 19th day of August, 1965 and the return has not been furnished on or before the said date.

(2) The declaration shall be made to the Commissioner and shall contain the name, address and signature of the person making the declaration (hereafter in this section referred to as the declarant) and also full information in respect of the following matters, namely:-

(a) whether he was assessed to income-tax or not and, if assessed, the designation of the Income-tax Officer by whom he was last assessed,;

(b) the amount of income declared, giving, where available, details of the previous year or years in which the income was earned and the amount pertaining to each such year;

(c) where the amount declared is represented by cash (including bank deposits), bullion, investment in shares, debts due from other persons, commodities or any other assets, and the name in which it is held and location thereof.

(3) Income-tax shall be charged on the amount of the voluntarily disclosed income-

(a) where the declarant is a person other than a company, at the rates specified in paragraph A, and

(b) where the declarant is a company, at the rates specified in paragraph F, of Part I of the First Schedule to the Finance Act, 1965, as if the amount were the total income of the declarant, so, however, that-

(i) the proviso to the said paragraph A or, as the case may be, the second proviso to the said paragraph F, shall not apply;

(ii) where the declarant is a person other than a company, the

voluntarily disclosed income shall be deemed to be earned income;

(iii) where the declarant is a company, the voluntarily disclosed income shall be deemed to consist of income other than income by way of royalties or fees for rendering technical services or profits and gains derived from the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any article or thing or of processing of goods or mining; and

(iv) where the declarant is a firm, it shall be deemed to be an unregistered firm.

Explanation.- For the purpose of charging income-tax at the rates specified in paragraph F of Part I of the First Schedule to the Finance Act, 1965, a company shall be deemed to be a company as is referred to in S.108 of the Income tax Act, 1961, 1961, if it is such a company in relation to the assessment year commencing on the 1st day of April, 1965.

(4)

(a) Within thirty days of the receipt of a declaration under sub-section (2), the Commissioner shall, if he is satisfied the whole or any part of the amount of income declared therein has been detected or is deemed to have been detected by the Income-tax Officer prior to the date of the declaration, make an order in writing to that effect recording therein his reasons therefor and specifying the amount of such income [which he shall estimate to the best of his judgment on the basis of such statement, information, document or other relevant material (including any asset) as is referred to in clause (b)] and forward a copy thereof to the declarant :

Provided that no order under this sub-section shall be made unless the declarant has been given an opportunity of being heard.

(b) For the purposes of this section, income shall be deemed to have been detected by the Income-tax Officer if-

(i) on the date of any statement, information, document or other relevant material (including any asset seized under Section 132 of the Income tax Act, 1961) which is in the knowledge or possession of the Income-tax Officer before the date of the declaration, or

(ii) on the basis of any statement, information, document or other

relevant material (including any asset seized under any other law for the time being in force) which is in the knowledge or possession of any other officer of Government before the said date and which has come to the knowledge or possession of the Income-tax Officer not later than fifteen days from the date of the declaration, such income can be shown to exist or its existence is considered so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists.

(5) If any person objects for any reason to an order passed by the Commissioner under sub-section (4), he may, within thirty days of the date on which such order is served on him, make an application to the Board, stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(6) On receipt of the application under sub-section (5), the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit and forward a copy thereof to the applicant and also to the Commissioner.

(7)

(a) The Commissioner shall, as soon as may be after the receipt of the declaration, forward the same to the Income-tax Officer together with a copy of his order, if any, under sub-section (4) and the Income-tax Officer shall thereupon determine the sum payable by the declarant in accordance with sub-section (3) and shall serve upon him a notice of demand under Section 156 of the Income tax Act, 1961 , and the provisions of Chapter XV and Chapter XVII-D of, and the Second Schedule and the Third Schedule to, that Act shall, as far as may be, apply accordingly as if the said sum were a sum payable under that Act :

Provided that nothing contained in the said Chapter XVII-D shall be deemed to authorise the Income-tax Officer to extend the time for payment of the tax due or allow payment thereof in instalments unless-

(i) such amount as is not less than ten per cent of the amount specified as payable in the notice of demand is paid by the declarant within thirty-five days of the service of the notice; and

(ii) the previous authority of the Commissioner is obtained by him for allowing payment of the balance by instalments:

Provided further that-

(i) the Commissioner shall in no case authorise payment by instalments unless the declarant furnishes such security for the payment of the balance of tax due in such form and in such manner as the Commissioner may, in his discretion, direct;

(ii) the instalments so authorised shall in no case extend beyond four years from the date of the declaration.

(b) Where in consequence of an order passed by the Board under sub-section (6), any additional amount of income-tax is found to be payable by the declarant under this section, the Income-tax Officer shall serve upon the declarant a further notice under Section 156 of the Income tax Act, 1961 , in respect of such additional amount and all the provisions of clause (a) of this sub-section shall apply accordingly as if the notice were a notice issued under that clause.

(8) An order under sub-section (6) shall be final and shall not be called in question before any Court of law or any other authority.

(9) Any amount of income-tax paid in pursuance of a declaration under this section shall not be refundable in any circumstances and no person who has made the declaration shall be entitled, in respect of the voluntarily disclosed income or any amount of tax paid thereon, to reopen any assessment or reassessment made under Income-tax Act, 1922, or Income tax Act, 1961 , or Excess Profits Tax Act, 1940, or Business Profits Tax Act 1947, or Super Profits Tax Act, 1963 , or Companies (Profits) Surtax Act, 1964 , or claim any set off or relief in any appeal, reference, revision or other proceeding in relation to any such assessment or reassessment.

(10)

(a) The amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under any of the Acts mentioned in sub-section (9) if he has credited such amount in the books of account, if any, maintained by him for any source of income or in any other record.

(b) The credit made shall be intimated by the declarant to the Income-tax Officer.

(11) Notwithstanding anything contained hereinabove or in any other law for the time being in force, nothing contained in any declaration made under this section shall be admissible as evidence

against the declarant for the purpose of any assessment proceeding or any proceeding relating to imposition of penalty or for the purpose of prosecution under any of the Acts mentioned in sub-section (9) or Wealth-tax Act, 1957, in respect of any amount specified in an order made by the Commissioner under sub-section (4) or, if such amount is altered by an order of the Board under sub-section (6), then, such altered amount.

(12)

(a) All particulars contained in any declaration made under this section or record of any proceeding under this section shall be treated as confidential and, notwithstanding anything contained in any law for the time being in force no Court shall be entitled to require any public servant to produce before it any such declaration or record or any part thereof or to give evidence before it in respect thereof.

(b) No public servant shall disclose any particulars contained in any such declaration or record except to any officer employed in the execution of any of the Acts mentioned in sub-section (9), or Wealth-tax Act, 1957, or to any officer appointed by the Comptroller and Auditor-General of India or the Board to audit income-tax receipts or refunds.

(13) The provisions of Section 154 of the Income tax Act, 1961 , shall, as far as may be, apply in respect of the rectification of any mistake apparent from the record of any proceeding under this section as they apply to the rectification of a mistake in any order under the said Act.

(14) Any payment of income-tax under this section shall be made by depositing the amount to the credit of the Central Government at a Government treasury or sub-treasury, or at any branch of the Reserve Bank of India, or at any branch of the State Bank of India, or at any of its agencies conducting Government treasury business.

(15) The Commissioner shall on an application by the declarant grant a certificate to him setting forth the particulars of the voluntarily disclosed income and the amount of income-tax paid in respect of the same and the date of payment: Provided that no certificate under this sub-section shall be granted unless the income-tax charged in pursuance of sub-section (3) of this section and the interest, if any, payable under sub-section (2) of S.220 of the Income tax Act, 1961, 1961, has been paid by the declarant in

full.

(16)

(a) In this section,-

(i) "earned income" shall have the meaning assigned to it in the Finance Act, 1965;

(ii) "person" shall have the meaning assigned to it in clause (31) of S.2 of the Income tax Act, 1961, but shall not include any local authority or a corporation established by a Central, State or Provincial Act.

(b) All other words and expressions used in this section but not defined and defined in the Income tax Act, 1961 , shall have the meanings respectively assigned to them in the said Act.

25. Amendment of Act 32 of 1934 :-

Note.- This section amended Tariff Act, 1934, which is now repealed and replaced by Customs Tariff Act, 1975 .]

26. Amendment of Act 1 of 1944 :-

Note.- This section amends Central Excises and Salt Act, 1944. These amendments will be found incorporated in that Act.]

SCHEDULE 1

SCHEDULE

[Note.- This Schedule amended First Schedule to Indian Tariff Act, 1934 which now stands repealed by Customs Tariff Act. 1975.
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