

SUPER PROFITS TAX ACT, 1963

14 of 1963

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SUPER PROFITS TAX ACT, 1963

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1. Short title and extent :-

(1) This Act may be called the Super Profits Tax Act, 1963.

(2) It extends to the whole of India.

2. Definitions :-

In this Act, unless the context otherwise requires,

(1) " assessee " means a person by whom super profits tax 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 reassessment;

(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 Revenue constituted under the Central Board of Revenue Act, 1924;

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

(6) " deficiency " in relation to an assessment year means- (i) where there are chargeable profits in respect of the previous year relevant to that assessment year, the amount by which such profits as increased by the sum excluded under clause (xi) or clause (xii), as the case may be, of rule 1 of the First Schedule falls short of the standard deduction ; (ii) where there are no chargeable profits in respect of the previous year relevant to that assessment year, the amount of the standard deduction ;

(7) " Income-tax Act " means the Income-tax Act, 1961;

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

(9) " standard deduction " means an amount equal to six percent of the capital of the company as computed in accordance with the provisions of the Second Schedule, or an amount of fifty thousand rupees, whichever is greater:

Provided that where the previous year is longer or shorter than a

period of twelve months, the aforesaid amount of six per cent. or, as the case may be, of fifty thousand rupees shall be increased or decreased proportionately : 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

(10) 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 :-

(1) Every Director of Inspection, Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officers shall have the like powers and perform the like functions, under this Act as he has and performs, under the Income-tax Act, and for the exercise of his powers and the performance of his functions, his jurisdiction under this Act will be the same as that he has under the Income-tax Act.

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board : Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(3) Every Income-tax Officer, employed in the execution of this Act, shall observe and follow the orders, instructions and directions issued for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner under whose jurisdiction he performs his functions.

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 1st day of April, 1963, a tax (in this Act referred to as the super profits tax) in respect of so much of its chargeable profits of the previous year or previous years, as the case may be, as exceed the standard deduction, at the rate or rates specified in the Third Schedule.

5. Relief on occurrence of deficiency :-

Where there is a deficiency in relation to any assessment year, the assessee shall be entitled to relief in accordance with the following provisions, namely,-

(i) the amount of the deficiency shall be carried forward and set off against the net chargeable profits of the assessee assessable for the next following assessment year and, if there are no net chargeable profits for that year or the amount of the deficiency exceeds the net chargeable profits for that year, the whole or the balance of the deficiency, as the case may be, shall be set off against the net chargeable profits of the assessee for the next following assessment year and if and so far as such deficiency cannot be wholly so set off, it shall be set off against the net chargeable profits of the assessee for the next following assessment year;

(ii) in no case shall the deficiency or any part thereof be carried forward beyond three assessment years immediately following the assessment year to which the deficiency relates;

(iii) where there is more than one deficiency and each such deficiency relates to a different assessment year, the deficiency which relates to an earlier assessment year shall be set off under clause (i) before setting off the deficiency relating to a later assessment year.

Explanation.-In this section and sub-section (1) of section 8, " net chargeable profits " means the amount by which the chargeable profits exceed the standard deduction.

6. Return of chargeable profits :-

(1) In the case of every company whose chargeable profits assessable under this Act exceeded during the previous year the amount of standard 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, 1961 , such person shall furnish a return of the chargeable profits of the company during the previous year and of the amount of any deficiency available for being set off against such profits under the provisions of this Act, 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, 1961 , 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 and of the amount of any deficiency available for being set off against such profits under the provisions of this Act, 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 by the Income-tax Officer 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.

7. Assessments :-

(1) For the purposes of making an assessment under this Act, the Income-tax Officer may serve on any person who has made a return under sub-section (1) of section 6 or upon whom a notice has been served under sub-section (2) of section 6 (whether a return has been made 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.

(2) The Income-tax Officer, after considering such accounts, documents or evidence, if any, as he has 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 chargeable profits and the amount of the super profits tax payable on the basis of such assessment or, if there is a deficiency, the amount of that deficiency.

8. Provisional assessments :-

(1) The Income-tax Officer, before proceeding to make an assessment under section 7 (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 6 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 super profits tax payable thereon : Provided that in making any such provisional assessment, the Income-tax Officer shall make allowance for any deficiency in relation to any earlier assessment year which under the provisions of this Act is to be set off against the net chargeable profits for the assessment year in respect of which the provisional assessment is being made, and where such deficiency has not been assessed under the provisions of sub-section (2) of section 7 , he shall estimate the amount thereof to the best of his judgment.

(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.

9. 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 6 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) above 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 6 , and may proceed to assess or reassess the amount chargeable to super profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

10. 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 6 , or to produce or cause to be produced the documents, accounts or other evidence required by the Income-tax Officer under sub-section (1) of section 7 , or has concealed the particulars of the chargeable profits or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay, by way of penalty, in addition to the amount of super profits tax payable, a sum not exceeding-

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

section 6 , the amount of super profits tax payable ;

(b) in any other case, the amount of super profits tax 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.

11. Opportunity of being heard :-

No order imposing a penalty under section 10 shall be made unless the assessee has been given a reasonable opportunity of being heard.

12. Appeals to the Appellate Assistant Commissioner :-

(1) Any person objecting to the amount of super profits tax 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, or to the amount of any deficiency as assessed by the Income-tax Officer, 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 14 or amendment under section 15 may appeal to the Appellate Assistant Commissioner.

(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 Appellate Assistant Commissioner 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 Appellate Assistant Commissioner 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 a penalty :

Provided that an order enhancing an assessment or a 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.

13. Appeals to Appellate Tribunal :-

(1) Any assessee aggrieved by an order passed by a Commissioner under section 17 , or an order passed by an Appellate Assistant Commissioner under any provisions 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 Appellate Assistant Commissioner under any provisions 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 filed 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 Appellate Assistant Commissioner 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 Appellate Assistant Commissioner, 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 a fee of rupees one hundred.

(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.

14. Rectification of mistakes :-

(1) With a view to rectifying any mistake apparent from the record, the Commissioner, the Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal may, of his, or 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 within four years of the date on which such order was passed.

(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.

15. Other amendments :-

(1) Where as a result of any order made under section 154 or Section 155 of the Income tax Act, 1961 , 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 super profits tax payable or refundable on the basis of such recomputation and make the necessary amendment and the provisions of section 14 shall, so far as may be, apply thereto, the period of four years specified in sub-section (1) of that section being reckoned from the date of the order passed under the aforesaid sections of the Income-tax Act.

(2) Where at any time before the expiry of the five years referred to in sub-clause (ii) of the proviso to clause (xi) of rule 1 of the First Schedule, a company utilises the amount credited by it to the special reserve account under that sub-clause for a purpose other than-

(a) repayment of any moneys borrowed or debt incurred by it for acquisition of capital assets ; or

(b) acquisition of capital assets in India for the purposes of its business; or

(c) payment of dividends on its preference share capital of any sum exceeding six per cent. of such capital, the exclusion of ten per cent. of the amount of total income originally made under clause (xi) of rule 1 of the First Schedule in computing the chargeable profits of the company shall be deemed to have been wrongly made and the Income-tax Officer may, notwithstanding anything contained in this Act, recompute the chargeable profits of the assessee for the relevant previous year and make the necessary amendment, and the provisions of section 14 shall, so far as may be, apply thereto, the period of four years specified in sub-section (1) of that section being reckoned from the end of the previous year in which the amount was so utilised.

16. Super profits tax deductible in computing distributable income under Act 43 of 1961 :-

Notwithstanding anything contained in clause (i) of Section 109 of the Income tax Act, 1961 , in computing the distributable income of a company for the purposes of sections 104 and 105 of that Act, the super profits tax payable by the company for any assessment year shall be deductible from the total income of the company for that assessment year.

17. 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.

(2) No order shall be made under sub-section (1)-

(a) to revise an order of reassessment made under section 9 , or

(b) after the expiry of two years from the date of the order sought to be revised.

(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.

18. 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 or Appellate Assistant Commissioner 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 orders 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-

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal ; or

(b) where the order is pending on an appeal before the Appellate Assistant Commissioner; or (c) where the order has been made the subject of an appeal to the Appellate Tribunal.

(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.

Explanation 2.-For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

19. Application of Provisions of Act 43 of 1961 :-

The provisions of the following sections and Schedules of the Income-tax Act shall apply with such modifications, if any, as may be prescribed, as if the said provisions were provisions of this Act and referred to super profits tax instead of to income-tax and super-tax:- 2(44), 131 to 138 (both inclusive), 140, 156, 160, 161, 162, 163, 166, 167, 170, 173, 175, 176, 178, 179, 220 to 229 (both inclusive), 231, 232, 233, 237 to 245 (both inclusive), 254 to 262 (both inclusive), 265 to 269 (both inclusive), 281, 282, 284, 286 to 293 (both inclusive), the Second Schedule and the Third Schedule:

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

Act.

20. Income-tax papers to be available for the purposes 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.

21. 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 6 or to produce, or cause to be produced, any accounts or documents required to be produced under section 7 , 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.

22. False statements :-

If a person makes in any return required under section 6 , 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.

23. Abetment 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 super profits tax 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.

24. Institution of proceedings and composition of offences :-

(1) A person shall not be proceeded against for an offence under section 21 or section 22 or Section 23 of the Indian Penal Code,

1860 except at the instance of the Commissioner.

(2) The Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 21 or section 22 or section 23 .

25. 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 any difficulty that may arise as a result of the application of this Act, to the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of super profits tax 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.

26. 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:-

(a) the form in which returns under section 6 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 12 or section 13 may be filed and the manner in which they shall be verified;

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

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

(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 or in two successive

sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in 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.

27. Saving :-

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