

Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires—

- (1) “actual cost” means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, but before the 1st day of March, 1975, and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under clause (ii) of sub-section (1) of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (iv) of sub-section (1) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

Explanation 2.—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the actual cost to the previous owner, as reduced by—

- (a) the amount of depreciation actually allowed under this Act and the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and
- (b) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets.

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Assessing Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Assessing Officer may, with the previous approval of the Joint Commissioner, determine having regard to all the circumstances of the case.

Explanation 4.—Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be—

- (i) the actual cost to him when he first acquired the asset as reduced by—
- (a) the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in

respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(b) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets; or

(ii) the actual price for which the asset is re-acquired by him, whichever is less.

Explanation 4A.—Where before the date of acquisition by the assessee (hereinafter referred to as the first mentioned person), the assets were at any time used by any other person (hereinafter referred to as the second mentioned person) for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of the second mentioned person and such person acquires on lease, hire or otherwise assets from the first mentioned person, then, notwithstanding anything contained in *Explanation 3*, the actual cost of the transferred assets, in the case of first mentioned person, shall be the same as the written down value of the said assets at the time of transfer thereof by the second mentioned person.

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

Explanation 6.—When any capital asset is transferred by a holding company to its subsidiary company or by a subsidiary company to its holding company, then, if the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied, the actual cost of the transferred capital asset to the transferee-company shall be taken to be the same as it would have been if the transferor-company had continued to hold the capital asset for the purposes of its business.

Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

Explanation 7A.—Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business :

Provided that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company.

Explanation 8.—For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use

shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.

Explanation 9.—For the removal of doubts, it is hereby declared that where an asset is or has been acquired on or after the 1st day of March, 1994 by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944.

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

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

Explanation 11.—Where an asset which was acquired outside India by an assessee, being a non-resident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee.

Explanation 12.—Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation;

Explanation 13.—The actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be treated as ‘nil’,—

(a) in the case of such assessee; and

(b) in any other case if the capital asset is acquired or received,—

(i) by way of gift or will or an irrevocable trust;

(ii) on any distribution on liquidation of the company; and

(iii) by such mode of transfer as is referred to in clauses (i), (iv), (v), (vi), (vib), (xiii), (xiiib) and (xiv) of section 47;

(2) “paid” means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head “Profits and gains of business or profession”;

- (3) “plant” includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings;
- (4) (i) “scientific research” means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries;
- (ii) references to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research;
- (iii) references to scientific research related to a business or class of business include—
- (a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;
- (b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;
- (5) “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

- (a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or
- (b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or
- (c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; or
- (d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange;

shall not be deemed to be a speculative transaction.

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

- (i) “eligible transaction” means any transaction,—
- (A) carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws

made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and

- (B) which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the unique client identity number allotted under any Act referred to in sub-clause (A) and permanent account number allotted under this Act;
 - (ii) “recognised stock exchange” means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified²³ by the Central Government for this purpose;
- (6) “written down value” means—
- (a) in the case of assets acquired in the previous year, the actual cost to the assessee;
 - (b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:

Provided that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (ii) of sub-section (1) of section 32, “depreciation actually allowed” shall not include depreciation allowed under sub-clauses (a), (b) and (c) of clause (vi) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (vi);

- (c) in the case of any block of assets,—
 - (i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,—
 - (A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year;
 - (B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and
 - (C) in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—
 - (a) by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and
 - (b) by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st

day of April, 1988 as if the asset was the only asset in the relevant block of assets,

so, however, that the amount of such decrease does not exceed the written down value;

- (ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i).

Explanation 1.—When in a case of succession in business or profession, an assessment is made on the successor under sub-section (2) of section 170 the written down value of any asset or any block of assets shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to.

Explanation 2.—Where in any previous year, any block of assets is transferred,—

- (a) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied; or
- (b) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,

then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the transferee-company or the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.

Explanation 2A.—Where in any previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (1), the written down value of the block of assets of the demerged company for the immediately preceding previous year shall be reduced by the written down value of the assets transferred to the resulting company pursuant to the demerger.

Explanation 2B.—Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (1), the written down value of the block of assets in the case of the resulting company shall be the written down value of the transferred assets [***] of the demerged company immediately before the demerger.

Explanation 2C.—Where in any previous year, any block of assets is transferred by a private company or unlisted public company to a limited liability partnership and the conditions specified in the proviso to clause (xiii b) of section 47 are satisfied, then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the limited liability partnership shall be the written down value of the

block of assets as in the case of the said company on the date of conversion of the company into the limited liability partnership.

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Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of section 32 shall be deemed to be depreciation “actually allowed”.

Explanation 4.—For the purposes of this clause, the expressions “moneys payable” and “sold” shall have the same meanings as in the *Explanation* below sub-section (4) of section 41.

Explanation 5.—Where in a previous year, any asset forming part of a block of assets is transferred by a recognised stock exchange in India to a company under a scheme for corporatisation approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the written down value of the block of assets in the case of such company shall be the written down value of the transferred assets immediately before such transfer.

Explanation 6.—Where an assessee was not required to compute his total income for the purposes of this Act for any previous year or years preceding the previous year relevant to the assessment year under consideration,—

- (a) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;
- (b) the total amount of depreciation on such asset, provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under this Act for the purposes of this clause; and
- (c) the depreciation actually allowed under clause (b) shall be adjusted by the amount of depreciation attributable to such revaluation of the asset.

Explanation 7.—For the purposes of this clause, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head “Profits and gains of business or profession”, for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head “Profits and gains of business or profession” and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.