ANNEXURE

1. The extract of amended Rule 37BB is produced as under:

"37BB. Furnishing of information by the person responsible for making any payment including any interest or salary or ***any other sum chargeable to tax****, to a non-resident, not being a company, or to a foreign company—(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or salary* ***or any other sum chargeable to tax*** *under the provisions of the Act, shall furnish the following, namely:—*

(i) the information in Part A of Form No.15CA, if the amount of payment does not exceed fifty thousand rupees and the aggregate of such payments made during the financial year does not exceed two lakh fifty thousand rupees;

(ii) the information in Part B of Form No.15CA for payments other than the payments referred in clause (i) after obtaining—

(a) certificate in Form No. 15CB from an accountant as defined in the Explanation below sub-section (2) of section 288; or

(b) a certificate from the Assessing Officer under section 197; or

(c) an order from the Assessing Officer under sub-section (2) or sub-section(3) of section 195.

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*Explanation 2.—****For the removal of doubts, it is hereby clarified that for payments of the nature specified in column (3) of the specified list below, no information is required to be furnished under sub-rule (1)****.*

The specified list consists of 28 items of payments for which Form 15CA and 15CB are not required."

2. CBDT Circular No. 23 dated 23 July 1969

- Para 3(1)(i) of the said circular provides the tax implication on a non-resident exporter selling goods from abroad to Indian importer. In this, it had been clarified that no liability will arise on accrual basis to the non-resident on the profits made by him where the transactions of sale between two parties are on a principal to principal basis. In all cases, the real relationship between the parties has been looked into on the basis of agreement existing between them, but where (a) the purchases made by the resident are outright on his own account, (b) the transactions between the resident and the non-resident are made at arm's length and at prices which would be normally chargeable to other customers, (c) the non-resident exercises no control over the business of the resident and sales are made by the latter on his own account, or (d) the payment to the non-resident is made on delivery of documents and is not dependent in any way on the sales to be effected by the residence, it can be inferred that the transactions are on the basis of principal to principal.

- Para 3(2) of the said circular provides tax implications on sale of goods to an Indian subsidiary. In this case, it had been clarified that if the transactions are made between the non-resident parent company and its Indian subsidiary actually on a principal to principal basis, at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact that the Indian company is a subsidiary of the non-resident company will not be considered as a valid ground for invoking Section 9 for assessing the non-resident. It has been further clarified that where a non-resident parent company sells goods to its Indian subsidiary, the income from the transaction will not be deemed to accrue to arise in India under Section 9, provided that (a) the contracts to sell are made outside India, (b) the sales are made on principal to principal basis and at arm's length, and (c) the subsidiary does not act as an agent of the parent company. There mere existing of a "business connection" arising out the parent subsidiary relationship will not give rise to an assessment, not will the fact that the parent company might exercise control over the affairs of the subsidiary.

- Para 3(3) of the said circular provides tax implications on export of plant and machinery on an instalment basis. In this, it had been clarified that where the transaction of sale and purchase is on a principal to principal basis and exporter and importer have no other business connection, the fact that the exporter allows the importer to pay for the plant and machinery in instalments will not, it self, render the export liable to tax on the ground that the income is deemed to arise to him in India. The Indian importer will not, in such a case, be treated as an agent of the exporter for the purposes of assessment.

3. Jurisprudence on determination of place of effecting 'sales':

Attention is also invited to the decisions in the case of Seth Pushalal Mansinghka (P.) Ltd. v. CIT (66 ITR 159)(SC), Singareni Collieries Company Ltd. v. CIT (21 ITR 375)(Mad), Mysore Sugar Company Ltd. v. CIT (31 ITR 760)(Mad) and CIT v. Kirloskar Oil Engines Ltd. (135 ITR 762)(Bom), where it was held that where the business consists merely of buying and selling goods, profits arise, as a general rule, at the place where the contracts of sale are made or sales are effected.

In the case of Rajkumar Mills Ltd. v. CIT (28 ITR 184)(SC) and CIT v. Anamallais Timber Trust Ltd. (18 ITR 333)(Mad), it was held that a contract is made at the place where the offer is accepted.

In the case of sale of unascertained goods, the sale takes place at the place where the property in the goods passes to the purchaser [Refer Seth Pushalal Mansinghka (P.) Ltd. v. CIT (66 ITR 159)(SC), CIT v. Anamallais Timber Trust Ltd. (18 ITR 333)(Mad) and Binod Mills Co. Ltd. v. CIT (62 ITR 424)(All)].

In CIT v. Mysore Chromite Ltd. (27 ITR 128)(SC), the Supreme court held that the property in the goods passed in London where the bill of lading was handed over to the buyer's bank against the acceptance of the relative bill of exchange and therefore, the sales took place outside India. In this case, it was accepted by both the parties that the income arise at the place where the sale took place and therefore, the Supreme court had to decide only the question as to where the sales took place. The

incidents of CIF contracts have been analysed in Mahabir Commercial Co. Ltd. v. CIT (86 ITR 417)(SC), where the seller was in Pakistan and the buyer in India, and CIF contracts of sale were entered into in India. The goods were loaded in Pakistan and the bills of lading were obtained in the name of the buyer whose bank accepted them against payment in Pakistan. The Supreme Court held that the property in the goods passed and sales took place in Pakistan.

In cases where the contracts of sales are made in one place and sales take place in another, profits may accrue, partly at the place where the contracts of sale are made, and partly at the place where the sale are effected and the contracts are executed. In CIT v. Anamallais Timber Trust Ltd. (18 ITR 333)(Mad), the entire profits were held to accrue at the latter place and no portion at the former. In CIT v. A. S. T. F. Rodriguez & Co. (20 ITR 247)(Mad), the profits should be apportioned and a part of the profits should be held to accrue at the place where the income-producing contracts for sale are made and a part at the place where the contracts are performed and sales are actually effected.

The Supreme Court in the case of Ishikawajma-Harima Heavy Industries Ltd. v DIT (288 ITR 408) (SC) held that only such part of the income, as is attributable to the operations carried out in India can be taxed in India. Since all parts of the transaction in question, i.e. the transfer of property in goods as well as the payment, were carried on outside the Indian soil, the transaction could not have been taxed in India. Reliance can also be placed on the following decisions:

- Hyosung Corporation (314 ITR 343)(AAR)
- Bharat Heavy Plate & Vessels Ltd. v. Addl. CIT (119 ITR 986)(AP)
- Addl. CIT v. Skoda Export Prabha (172 ITR 358)(AP)
- DIT v. Nokia Networks OY and others (78 DTR 41)(Del)