

ACT No. XXII of 1947.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the 18th April 1947.)

An Act further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing;

XI of 1922.
XV of 1940.

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. (1) This Act may be called the Income-tax and Excess Profits Tax (Amendment) Act, 1947. Short title and commencement.

(2) It shall be deemed to have come into force on the 31st day of March 1947.

CHAPTER II

Amendments of Act XI of 1922

2. In section 2 of the Indian Income-tax Act, 1922 (hereafter in this Chapter referred to as the said Act),— Amendment of section 2, Act XI of 1922.

(a) clause (4A) shall be renumbered as clause (4B), and after clause (4) the following clause shall be inserted, namely :—

“(4A) “capital asset” means property of any kind (other than agricultural land) held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation ;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him ;

(b) for the *Explanation* to clause (6A) the following shall be substituted, namely :—

‘Provided further that the expression “accumulated profits”, wherever it occurs in this clause, shall not include capital gains of any previous year prior to the previous year for the assessment for the year ending on the 31st day of March 1948 ;’

(c) in clause (6C), after the word and figures “section 10”, the words, figures and letter “and any capital gain chargeable according to the provisions of section 12B” shall be inserted ;

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(d) in clause (15), for the words "does not apply; and" the words "does not apply and except any capital gain which is not includible in the total income of an assessee;" shall be substituted.

Amendment of section 4, Act XI of 1922.

3. In sub-section (3) of section 4 of the said Act,—

(a) to clause (iv) the words "and any capital gains of the Fund arising from the sale, exchange or transfer of such securities" shall be added;

(b) in clause (vii), after the words "Any receipts" the words, figures and letter "not being capital gains chargeable according to the provisions of section 12B and" shall be inserted.

Amendment of section 4A, Act XI of 1922.

4. To clause (c) of section 4A of the said Act, the words "account not being taken in either case of income chargeable under the head "Capital gain" shall be added.

Amendment of section 6, Act XI of 1922.

5. To section 6 of the said Act the following clause shall be added, namely:—

"(vi) Capital gains".

Insertion of new section 12B in Act XI of 1922.

6. After section 12A of the said Act the following section shall be inserted, namely:—

12B. (1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March 1946; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place:

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income:

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income:

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets:

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in British India and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely :—

- (i) expenditure incurred solely in connection with such sale, exchange or transfer ;
- (ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10 and 12 :

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place :

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section :

Provided further that where the capital asset became the property of the assessee before the 1st day of January 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or

diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10 :

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the third proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly ; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(a) if the amount of the capital gain is greater than the cost of the new asset,—

(i) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(ii) for the purposes of computing in respect of the new asset any allowance under clause (vi) or clause (vii) of sub-section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be *nil*, or

(b) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(i) the capital gain shall not be charged under this section, and

- (ii) for the purposes of computing in respect of the new asset any allowance under the said clause (vi) or any allowance or adjustment under the said clause (vii) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain :

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this sub-section, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

7. In clause (c) of sub-section (2) of section 14 of the said Act, after the words " are assessable under " the words, figures and letter " section 12B or " shall be inserted. Amendment of section 14, Act XI of 1922.

8. To section 17 of the said Act the following sub-sections shall be added, namely :— Amendment of section 17, Act XI of 1922.

(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head " Capital gains ", the tax, including super-tax, payable by him on his total income shall be—

- (i) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*
- (ii) income-tax on the whole amount of such inclusion at the following rates, namely :—

where such amount—	Rate.
exceeds Rs. 15,000 but does not exceed Rs. 50,000 One anna in the rupee,
exceeds Rs. 50,000 but does not exceed Rs. 2,00,000 Two annas in the rupee,
exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 Three annas in the rupee,
exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 Four annas in the rupee,
exceeds Rs. 10,00,000 Five annas in the rupee :

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

- (a) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*

(b) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head "Capital gains", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.'

Amendment
of section
18A, Act XI
of 1922.

9. To section 18A of the said Act the following sub-section shall be added, namely:—

'(12) Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of this section.'

Amendment
of section
24, Act XI
of 1922.

10. In section 24 of the said Act, after sub-section (2) the following sub-sections shall be inserted, namely:—

'(2A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head "Capital gains", such loss shall not be set off except against any profits and gains falling under that head.

(2B) Where an assessee sustains a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.'

Amendment
of section 38,
Act XI of
1922.

11. To section 38 of the said Act the following clause shall be added, namely:—

"(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

Amendment
of section 42,
Act XI of
1922.

12. In section 42 of the said Act,—

(a) for the marginal heading the following shall be substituted, namely:—

"Income deemed to accrue or arise within British India";

(b) in sub-section (1), after the words "in cash or in kind," the words "or through or from the sale, exchange or transfer of a capital asset in British India," shall be inserted.

13. To section 43 of the said Act the following *Explanation* shall be added, namely:—

Amendment of section 43, Act XI of 1922.

"*Explanation.*—A person, whether residing in or out of British India, who acquires, after the 28th day of February, 1947, whether by sale, exchange or transfer, a capital asset in British India from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India."

14. In clause (d) of sub-section (1) of section 58C of the said Act, after the words "securities purchased therewith," the words "and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund," shall be inserted.

Amendment of section 58C, Act XI of 1922.

15. In section 58R of the said Act, after the words "deposits of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange or transfer of capital assets of such fund" shall be inserted.

Amendment of section 58R, Act XI of 1922.

CHAPTER III

Amendments of Act XV of 1940

16. In section 15 of the Excess Profits Tax Act (hereafter in this Chapter referred to as the said Act), the words "within five years of the end of the chargeable accounting period in question" shall be omitted, and shall be deemed always to have been omitted.

Amendment of section 15, Act XV of 1940.

17. After section 26 of the said Act the following section shall be inserted, namely:—

Insertion of new section 26A in Act XV of 1940.

"26A. (1) If on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

Further powers of Central Board of Revenue to grant certain relief.

(i) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, in connection with that business,—

- (a) expenditure on the removal of works constructed for protection against enemy attack;
- (b) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;

- (c) where any physical assets held for the purposes of the business were altered to adapt them to war conditions: expenditure on re-adapting them to normal requirements ;
- (d) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war ; or

(ii) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, a loss on the sale of trading stock held on the 31st day of March 1946 for the purposes of the business ; or

(iii) incurred in any accounting period ending on or before the 31st day of March 1946 in connection with that business any expenditure referred to in the sub-clauses of clause (i) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period :—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require :

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate :

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in sub-clauses (a), (b) and (c) of clause (i) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable :

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (b) and (c) of clause (i) as the persons previously carrying on the business would have had if there had been no such change.

(2) Where an accounting period included, but did not end on, the 31st day of March 1946, all expenditure referred to in the sub-clauses of clause (i) of sub-section (1) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (1) as if it were incurred after that day, and if an

application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub section (1).

(3) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change."

18. To the first paragraph of rule 11 of Schedule I to the said Act the following proviso shall be added, namely :—

Amendment of
Schedule I, Act
XV of 1940.

"Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period; and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require."