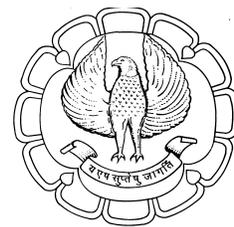


**GUIDANCE NOTE ON  
REPORT UNDER SECTION 115JB  
OF THE INCOME-TAX ACT, 1961**

[Based on the law as amended by the Finance Act, 2003]



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
NEW DELHI**

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NEW DELHI

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## FOREWORD

The concept of Minimum Alternate Tax (MAT) as introduced by the Finance Act, 2000 through section 115JB in the Income-tax Act has cast an onerous responsibility on the chartered accountant to certify that the book profit has been computed in accordance with the provisions of the Income-tax Act. He has also to certify the income-tax payable by the company.

Since several critical issues arose in the implementation of the above requirements, the Fiscal Laws Committee, after an in-depth consideration of these issues, brought out a Guidance Note on Audit under section 115JB of the Income-tax Act, 1961.

Subsequent to this, many judicial decisions were pronounced on the provisions. Further, the practical experience of the chartered accountants while certifying the book profit threw up a number of issues which required a critical analysis. Accordingly, the Fiscal Laws Committee has now come out with the second revised edition of the publication entitled "Guidance Note on report under section 115JB of the Income-tax Act, 1961".

I compliment Mr. Pradeep S. Shah, FCA, Mumbai for preparing the basic draft of the revised publication. I congratulate all the members of the Fiscal Laws Committee particularly Mr. J. P. Gokhale, Chairman of the committee for completing the project which was initiated by Mr. T. N. Manoharan, the immediate past Chairman.

October 14, 2003  
New Delhi

R. BUPATHY  
PRESIDENT

## PREFACE

The Finance Act, 2000 inserted section 115JB in the Income-tax Act w.e.f. Assessment Year, 2001-02 providing for levy of Minimum Alternate Tax on companies. Section 115JB(4) requires a chartered accountant to certify the book profit and also the tax payable thereon under the section. Several issues arose in the practical implementation of the above section. The Fiscal Laws Committee examined these issues and brought the Guidance Note on Audit under section 115JB of the Income-tax Act, 1961.

Subsequent to the publication of the guidance note in July, 2001 several judicial decisions have been pronounced on the various aspects of the provisions of section 115JB. Significant statutory amendments have also been incorporated. Further, the hands-on experience of the chartered accountants in the actual implementation of the requirements of section 115JB(4) have thrown up many significant issues. Moreover, the fundamental issue whether the responsibility envisaged by section 115J(4) amounted to an audit or only a reporting function needed a re-look. Accordingly, the Fiscal Laws Committee undertook the revision of the publication and has brought out the second edition entitled "Guidance Note on Report under section 115JB of the Income-tax Act, 1961."

Mr. Pradeep S. Shah, FCA, Mumbai shouldered the responsibility of preparing the basic draft of the revised publication. Mr. T.N. Manoharan, immediate past Chairman of the Committee, initiated the revision during his term. Mr. R. Bupathy, President and Mr. Sunil Goyal, Vice-President were the guiding force behind this revision. I place on record my sincere thanks to each of the above for the efforts taken and guidance provided.

I also compliment Mr. R. Devarajan, Secretary to the Committee who rendered technical assistance and Mr. Y.S. Rawat, Steno-Typist who took care of the secretarial functions.

October 14, 2003  
New Delhi

**J.P. GOKHALE**  
**CHAIRMAN**  
**FISCAL LAWS COMMITTEE**

## FOREWORD TO THE FIRST EDITION

The concept of Minimum Alternate Tax (MAT) was introduced in the direct tax system to make sure that companies having large profits and declaring substantial dividends to shareholders but who were not contributing to the exchequer by way of corporate tax, by taking advantage of the various incentives and exemptions provided in the Income-tax Act, pay a fixed percentage of book profit as minimum alternate tax. Section 80VVA was the forerunner to the concept of MAT.

Section 115JB, inserted by the Finance Act, 2000 has cast a responsibility on the chartered accountant to certify that the book profit has been computed in accordance with the provisions of the Income-tax Act. He has also to certify the income-tax payable by the company.

The prescribed form of report and the Annexure thereunder contain significant requirements and several critical issues have arisen for an in-depth consideration and giving guidance to the members for properly discharging this onerous responsibility.

I am very happy that the Fiscal Laws Committee has critically analysed these issues and come out with a guidance note on the subject. I am confident that this guidance note would help the members in discharging their responsibilities in a befitting manner.

I compliment all the members of the Fiscal Laws Committee and, particularly Mr. Sunil Goyal, Chairman, Mr. T.N. Manoharan, Vice-Chairman, Mr. R Anand, Convenor of Chennai Study Group and Mr. Ved Jain, Convenor of the Delhi Study Group for the speedy completion of this publication. I also wish to appreciate Mr. R. Devarajan, Secretary, Fiscal Laws Committee who has rendered technical assistance and also coordinated this project.

New Delhi.  
July 12, 2001.

N. D. Gupta  
President

## PREFACE TO THE FIRST EDITION

The Finance Act, 2000 inserted section 115JB in the Income-tax Act w.e.f. Assessment Year 2001-2002 providing for levy of Minimum Alternate Tax on companies. Section 115JB conceptually differs from section 115JA, the erstwhile section, which provided for MAT on companies.

Section 115JB(4) of the Income-tax Act requires that every company falling under section 115JB shall furnish a report in the prescribed form from a chartered accountant certifying that the book profit and tax payable thereon under section 115JB has been computed in accordance with the provisions of that section. This report is necessary beginning from Assessment Year 2001-2002. As this is a new clause, many controversial issues are involved in the same. Some of the issues pertain to the computation of book profit, allowability of deductions, effect of qualified audit report etc. In this background a need was felt to issue a guidance note for the guidance of members in conducting audit under section 115JB.

The Fiscal Laws Committee constituted different study groups and considered the relevant issues in depth and accordingly this guidance note was prepared. I wish to place on record my sincere thanks to Mr. T.N. Manoharan, Vice-Chairman, Fiscal Laws Committee, other members and invitees of the Fiscal Laws Committee for their whole-hearted support and cooperation for the preparation of this guidance note.

I also sincerely thank the Chennai Study Group, which, under the convenorship of Mr. R. Anand, prepared the basic study draft on the subject, the Delhi Study Group, which, under the convenorship of Mr. Ved Jain, studied the draft in depth and came out with a large number of issues, and the Jaipur Study Group, which under the convenorship of Mr. Rajiv Sogani and co-convenorship of Shri Ravindra Raniwala were instrumental in giving the final shape to this guidance note. I am also thankful to Mr. N.D. Gupta, President and Mr. A.K. Chandak, Vice-President of the Institute, for their encouragement and guidance in the publication of this guidance note.

I also want to place on record my sincere appreciation for Mr. R. Devarajan, Secretary to the committee for technical assistance and cooperation and Mr. Y. S. Rawat for the secretarial assistance rendered by them.

I am sure that this guidance note will be of great help to the members in discharging their onerous responsibility under section 115JB of the Income-tax Act.

Place: Jaipur.  
July 12, 2001.

SUNIL GOYAL  
CHAIRMAN  
FISCAL LAWS COMMITTEE

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## CLARIFICATION REGARDING AUTHORITY ATTACHED TO THE DOCUMENTS ISSUED BY THE INSTITUTE

*"Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary".*

(Volume I of the Compendium of Guidance Notes (4<sup>th</sup> Edition, 1993), page (x), Para 5)

**GUIDANCE NOTE ON  
REPORT UNDER SECTION 115JB  
OF THE INCOME-TAX ACT, 1961**

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**1. Terms, abbreviations used in this Guidance Note**

In this Guidance Note the following terms and abbreviations occur often in the text. A brief explanation of such terms and abbreviations is given below. Further, reference to a section without reference to the relevant Act means that the section has reference to the Income-tax Act, 1961.

**(a) AASs**

The Auditing and Assurance Standards issued by the ICAI.

**(b) Accountant**

Means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, as referred to in section 288 of the Act.

**(c) AS**

The Accounting Standards issued, prescribed and made mandatory by the ICAI.

**(d) AS (IT)**

The Accounting Standards notified by the Central Government under section 145(2) of the Act.

**(e) Act**

The Income-tax Act, 1961.

**(f) Annexure A**

Annexure A to Form No.29B, prescribed by Rule 40B of the Rules.

**(g) Board**

The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963.

- (h) Circular**  
A circular or instructions issued by the Board under section 119(1) of the Act.
- (i) ICAI**  
The Institute of Chartered Accountants of India.
- (j) MAT**  
Minimum alternate tax.
- (k) Method and rate of depreciation**  
The method and the rate adopted for calculation of depreciation for the preparation of the profit and loss account in accordance with the Parts II and III of Schedule VI to the Companies Act, 1956 for the purpose of laying it before an annual general meeting of the company in accordance with the provisions of Companies Act, 1956.
- (l) Profit and loss account**  
The profit and loss account prepared in accordance with the Parts II and III of Schedule VI to the Companies Act, 1956 for purposes of the section 115JB.
- (m) Report**  
The report of the accountant to be furnished under section 115JB prescribed in Form No.29B under Rule 40B of the Rules.
- (n) Rules**  
The Income-tax Rules, 1962.
- (o) SLM**  
The straight line method of depreciation.
- (p) WDV**  
The written down value method of depreciation.

## 2. Introduction

- 2.1 The levy of a minimum tax on companies making large profits and declaring substantial dividends to the shareholders but not paying income-tax on such profits due to the various exemptions and incentives provided in the Act, led to the introduction of the concept of MAT.

This concept was introduced under section 115J by the Finance Act, 1987 with effect from A.Y. 1988-89 and was withdrawn with effect from A.Y. 1991-92 - Refer *Appendix I* for the text of section 115J and *Appendix V* for circular No.495 explaining the scope of the provisions of section 115J. Subsequently the concept was reintroduced with a few changes, imposing MAT under section 115JA with effect from A.Y. 1997-98. The Finance Act, 2000 has inserted section 115JB with effect from A.Y. 2001-2002. Consequential amendments have been made in section 115JA to restrict its applicability only upto A.Y. 2000-2001 - Refer *Appendix II* for the text of section 115JA. A comparative analysis of the section with section 115JA is given in *Appendix IV*.

- 2.2 To facilitate the computation of book profit, section 115JB lays down that a company liable to MAT should have the book profit certified by an accountant and furnish the report along with its return of income.
- 2.3 Section 115JAA provided for credit of MAT and has been discontinued. The unavailed tax credit under that section can be claimed for the balance of unexpired period of five years against excess of normal tax liability over section 115JB tax liability. All the same, the provision thereof is given in *Appendix III* and *Appendix XI* gives Circular No. 763 explaining the provisions of section 115JAA.

## 3. Objective of this Guidance Note

The object of this guidance note is to provide guidance to the members for discharging their responsibilities under section 115JB. It intends to:

- (i) explain the relevant provisions of section 115JB for the purposes of certification;
- (ii) explain the requirements of certification;
- (iii) assist in clarifying the respective responsibilities of the company and the accountant;
- (iv) suggest inquiries the accountant should make from the company;
- (v) provide guidance on the verification procedure for certification of book profit and tax payable thereon as per section 115JB and other particulars in the report;
- (vi) suggest the manner of dealing with certain issues arising in the matter; and
- (vii) suggest the circumstances/manner in which a disclosure may be made or a qualified/adverse certificate may be issued.

#### **4. Applicability of section 115JB**

##### **4.1 General**

The title of section 115JB reads “special provision for payment of tax by certain companies”. Sub-section (4) of section 115JB begins with the words “every company to which this section applies.....” A conjoint reading of these indicates that the requirement of audit under section 115JB shall apply to companies which are liable to pay tax by virtue of that section. However, it may not be possible to conclusively determine the liability of a company under that section from the face of the profit and loss account without making complex adjustments envisaged under that section. Where applicability of section 115JB cannot be ruled out it may be prudent for the company to obtain a report from an accountant for ascertaining its liability under that section and also enclose it along with the return.

4.2 The objective behind the requirement of furnishing the report is to facilitate the determination of book profit and the

tax liability thereon by the Assessing Officer. The provisions of sub-section (4) of section 115JB mandate the furnishing of the report along with the return of income filed under sub-section (1) of section 139 or along with the return furnished in response to a notice under clause (i) of sub-section (1) of section 142. However, in cases of return filed under section 139(4) also the report should be furnished along with the return.

#### **4.3 Foreign companies**

In regard to the applicability of the provisions of section 115JB to foreign companies with reference to the profits derived from operations in India, the Authority for Advance Rulings had occasion to examine the issue and held that the provisions of the section 115JA are applicable to foreign companies. According to this decision, a foreign company shall calculate its Indian profits separately for the purpose of minimum alternate tax – *P. No.14 of 1997 In re (1998) 234 ITR 335 (AAR)*. The same analogy may apply to section 115JB.

#### **4.4 Presumptive tax provisions vis-à-vis the section**

There are special provisions enacted under the head “profits and gains of business or profession” which provide for determination of income on a presumptive basis. They are sections 44AD, 44AE, 44AF, 44B, 44BB, 44BBA and 44BBB. Further, the provisions of section 42 provide for computation of business income under Chapter IV-D in the case of an assessee engaged in the business of extraction or production of mineral oil in respect of which an agreement has been entered into with the Central Government. The income derived from the sources covered by such presumptive provisions and computed in accordance with such provisions are deemed to be the profits and gains of business or profession. Therefore, the total income shall be computed under the provisions of the Act after taking such income into account. The tax payable thereof on the total income is computed. Such income-tax has to be compared with 7.5% of the book profit and whichever is more would be

the tax payable by the company. Refer Nike Resources Ltd. v. CCIT (1998) 234 ITR 828 (AAR).

## 5. The statutory provisions

5.1 The Finance Act, 2000 inserted section 115JB in the Act w.e.f. A.Y. 2001-2002. The said section reads as follows:

*"115JB. Special provision for payment of tax by certain companies*

*(1). Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after 1st day of April, 2001, is less than seven and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent.*

*(2). Every assessee, being a company shall for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):*

*Provided that while preparing the annual accounts including profit and loss account,-*

- (i) the accounting policies;*
- (ii) the accounting standards followed for preparing such accounts including profit and loss account;*
- (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in*

*accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):*

*Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-*

- (i) the accounting policies;*
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;*
- (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.*

*Explanation. - For the purpose of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -*

- (a) the amount of income-tax paid or payable, and the provision therefor; or*
- (b) the amounts carried to any reserves, by whatever name called; or*
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or*
- (d) the amount by way of provision for losses of subsidiary companies; or*
- (e) the amount or amounts of dividends paid or proposed; or*

(f) *the amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply,*

*if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by-*

(i) *the amount withdrawn from any reserve or provision (excluding a reserve created before the 1<sup>st</sup> day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account.*

*Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below second proviso to section 115JA, as the case may be; or*

(ii) *the amount of income to which any of the provisions of section 10 or section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or*

(iii) *the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.*

*Explanation – For the purposes of this clause, -*

(a) *the loss shall not include depreciation;*

(b) *the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil; or*

- (iv) *the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or*
- (v) *the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or*
- (vi) *the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section and subject to the conditions specified in that section; or*
- (vii) *the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.*

*Explanation - For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).*

*(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.*

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section."

- 5.2 The following is the relevant portion of the speech of the Finance Minister when he introduced the Finance Bill, 2000.

*"156. The various exemptions currently available while calculating Minimum Alternate Tax (MAT) and the credit system has undermined the efficacy of the existing provision and has also led to legal complications. To address these issues, I propose that the Minimum Alternate Tax be now levied at the revised rate of 7.5% of the "book profits" as determined under the Companies Act instead of the existing effective rate of 10.5%. However, this will now be uniformly applied - barring one exception that I will mention later. There will also be no credit for Minimum Alternate Tax paid. This should bring all zero tax companies within the tax net, which is also the basic purpose of this tax. The new system has the virtue of a lowered rate of tax, a simple method of computation, and an equitable spread".*

- 5.3 The Memorandum explaining the provisions of the Finance Bill, 2000 explains the proposals for a new MAT as under:

**MINIMUM ALTERNATE TAX ON COMPANIES**

*"As the number of zero tax companies and companies paying marginal tax had grown, Minimum Alternate Tax was levied from assessment year 1997-98. The efficacy of the existing provision has declined in view of the exclusion of various sectors from the operation of MAT and the credit*

*system. It has also led to legal complications. It is, therefore, proposed to put a sunset clause in the existing provision, so that, it is not applicable after assessment year 2000-2001.*

*In its place, it is proposed to insert a new provision, which is simpler in application.*

*The new provisions provide that all companies having book profits under the Companies Act, prepared in accordance with Part II and Part III of Schedule VI to the Companies Act, shall be liable to pay a Minimum Alternate Tax at a lower rate of 7.5%, as against the existing effective rate of 10.5% of the book profits. These provisions will be applicable to all corporate entities without any exception. However, export profits under section 80HHC, 80HHE and 80HHF are kept out of the purview of this provision during the period of phasing out of deductions available under those provisions. In view of the changes made in the provisions of section 10A and 10B, those export-oriented units and the units in Free Trade Zones, which are set up before 1.4.2000, would be out of the purview of new provisions of MAT.*

*No credit of MAT paid under the new provision will be available. However, the credit for the brought forward MAT paid under the existing provisions will be allowed against the regular tax payable but not against the tax payable under the new provision.*

*The proposed amendment will take effect from 1st April, 2001, and will, accordingly, apply in relation to assessment year 2001-2002 and subsequent years."*

## **6. Requirements to be complied with**

6.1 Broadly stated, the section requires a company to:

- (i) prepare the profit and loss account;
- (ii) compute the book profit and determine its tax liability;

- (iii) determine the applicability of section 115JB; and
  - (iv) comply with the requirements, like obtaining a report from the accountant and furnishing the same along with the return of income.
- 6.2 Every company should prepare its profit and loss account for the relevant previous year in accordance with Parts II and III of Schedule VI to the Companies Act, 1956. While preparing the annual accounts including profit and loss account, the accounting policies, the accounting standards adopted for preparing such accounts including the profit and loss account and the method and rates adopted for calculating the depreciation shall be the same as have been adopted for the purposes of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956.
- 6.3 To arrive at the book profit the net profit as shown by the profit and loss account for the relevant previous year should be increased/ decreased by the adjustments specified in the Explanation below sub-section (2) of section 115JB.
- 6.4 The report of the accountant is to be given in Form No.29B prescribed under Rule 40B. Rule 40B and Form No.29B are given in Appendix V. Accordingly, the accountant has to
  - (a) certify that the book profit is computed in accordance with the provisions of the section;
  - (b) state the amount of tax payable by the company under the section;
  - (c) certify that the particulars given in Annexure A are true and correct; and
  - (d) furnish the details relating to the assessee as well as the information relating to the computation of book profit and preparation of the profit and loss account.
- 6.5 Thus it may be noted that the requirements are restricted to verification of particulars of computation of book profit and

do not extend to compliance with the other provisions of the section like applicability of the provisions, procedural compliance etc.

- 6.6 The primary requirement is the certification to the effect that book profit is computed 'in accordance with' the section. The words 'in accordance with' as interpreted by the Calcutta High Court in *Nav Bharat Vanijya Ltd. [(1980) 123 ITR 865, 869]*, having regard to the dictionary, mean 'in conformity to, or in agreement or harmony with'. In this context, the expression "in accordance with" means that the accountant has to certify that the computation of book profit is in agreement with the requirements as specified in the section. He has to verify that all the applicable provisions of the section are considered for the purposes of compliance. He should also verify that if any view is taken with respect to the application or non-application of any provision or application of the provision in a particular manner, adequate disclosure in respect thereof is made in the report.

## **7. Company's responsibility**

Ensuring compliance of the provisions of section 115JB is primarily the responsibility of the company. It would cover all the requirements stated in para 6.1 above. The company should prepare statement of its liability under this section duly authenticated, giving details and the basis of all the adjustments made and submit the same to the accountant for verification and certification. The company should also make available to the accountant all the books of account, records and other documents as may be deemed necessary by the accountant for the purpose.

## **8. Accountant's responsibility**

- 8.1 The accountant should verify the statement of computation of tax liability submitted by the company from the books of account, records and such other documents of the company, as he may deem proper. He should note that the AASs issued by the Institute would be applicable to the certification under section 115JB, to the extent relevant.

Accordingly, he may also obtain such other information, as he may deem appropriate in the form of Management's Representation as mentioned in AAS 11.

- 8.2 As in the case of other professional assignments, the accountant should comply with the "Code of Ethics" issued by the Institute while performing an assignment under the section. The accountant is advised to conduct the assignment under section 115JB in accordance with this guidance note.
- 8.3 While computing the book profit many issues may arise on which more than one view is possible. The company may adopt a particular view while arriving at the book profit and preparing other particulars. The accountant will have to examine various claims or assertions made by the company on different items which may include definition of book profit, exempted income, additions to or deductions from book profit, adjustment of brought forward depreciation/ business loss, computation of tax payable thereon etc. The accountant should examine these issues keeping in mind that the provisions of section 115JB which constitute a self contained code for computation of book profit. The basic purpose of the report here is the verification and certification of book profit and tax thereon as per section 115JB and not the computation of assessable income of the company as per the general provisions of the Act. He should examine the stand of the company for each item and the basis thereof by using his professional skill and expertise. In case of any contentious issue, where more than one view is possible, wherever the company places reliance on any judicial precedents or any circulars, the same should be suitably disclosed and where no circulars or judicial precedents are available, the basis of view taken by the company should be suitably disclosed.
- 8.4 The company has to furnish the report along with return of income. Accordingly, once the requirements of para 6.1 are completed by the company and the required particulars are made available to the accountant, he should make his report

available to the company before the due date for filing the return of income.

**9. Scope of certification in the report under section 115JB**

9.1 The scope of certification envisaged by section 115JB is restricted to such examination of accounts and records of the company as would enable the accountant to:

- (a) certify whether the book profit has been computed in accordance with the provisions of section 115JB; and
- (b) state the income-tax payable thereon (to be determined on the basis of the details in Annexure A).

9.2 The report does not require the accountant to certify the true and fair view of the financial statements of the company on the given date as is required under section 227 of the Companies Act, 1956. Therefore, he should restrict his examination to such details and matters which in his opinion are sufficient to certify the computation of the book profit and tax payable thereon as per section 115JB and also to certify the correctness of other particulars as mentioned in the said report. This guidance note should be read within the parameters of the scope of certification explained as above.

9.3 While preparing the annual accounts, the profit and loss account and other particulars for the purpose of enabling the accountant to give his report under sub-section (4) of section 115JB the company is entitled to its line of thinking on various issues. The accountant while giving his report under sub-section (4) has to exercise his professional judgement. If on any issue or item there is a difference of opinion between the accountant and the company then the accountant should suitably disclose both the views.

**10. Report under section 115JB**

10.1 The report consists of three paragraphs:

- (a) The first paragraph contains the declaration about the examination of the accounts and records of the company in order to arrive at the book profit.
- (b) The second paragraph involves certification of computation of book profit in accordance with section 115JB and the quantification of the tax payable under that section on the basis of the details furnished in Annexure A.
- (c) The last paragraph requires expression of the opinion that the particulars given in Annexure A are true and correct.

The book profit and the tax payable under section 115JB are to be determined on the basis of the details given in the **Annexure A**. The particulars required as per the **Annexure** should be obtained by the accountant from the company based on which, computation of book profit can be made. As has been stated earlier the onus of preparing and authenticating such particulars lies on the company.

- 10.2 For the purpose of giving his report, the accountant may have to examine the requirement of information and documents having regard to the facts and circumstances of each case. He may have to examine the following information and documents, which are only illustrative:
- (a) the profit and loss account and profit and loss account as laid before the annual general meeting of the company in accordance with section 210 of the Companies Act, 1956;
  - (b) the auditor's report on the above accounts where available;
  - (c) a certified copy of the computation of total income (as per the provisions of the Act);
  - (d) a copy of the audit report under section 44AB of the Act where available;

- (e) a copy of the certificate or report, if any, obtained under the provisions of sections 80HHC, 80HHE and 80HHF;
- (f) a copy of the audited accounts and report in respect of undertakings referred to in sections 10A, 10B;
- (g) the statements, workings and estimation in respect of various adjustments required along with the explanation or representation by the management (to illustrate, details of brought forward losses and unabsorbed depreciation as per books of account);
- (h) such other documents and papers as may be necessary or relevant for the purpose of verification of profit and loss account and various adjustments required for computing book profit;
- (i) representations from the management about
  - (i) accounting standards;
  - (ii) accounting policies;
  - (iii) method and rate of depreciation;
  - (iv) computation of total income;
  - (v) the adjustments required under Explanation below sub-section 2 of section, for computation of book profit.

For the purposes of his report it may also be necessary for the accountant to examine the books of account and records having due regard to the various adjustments relating to the profit and loss account and book profit.

- 10.3 Broadly stated, it would be necessary for the accountant to examine whether
- (a) the profit and loss account has been prepared in accordance with parts II and III of Schedule VI to the Companies Act, 1956;
  - (b) the profit and loss account follows the same accounting standards, accounting policies and

method and rate of depreciation as followed for the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956;

- (c) the statutory adjustments required for the purpose of computing the book profit are in accordance with the provisions of the Act;
- (d) the items for which appropriate disclosures are required and the mode and manner in which they should be disclosed.

10.4 While preparing the report the guidance given in "Guidance on Audit Report and Certificate for Special purposes" must be kept in mind. The Guidance Note makes various suggestions about the procedure as well as the mode and manner of reporting including the contents thereof.

## 11. Examination of accounts and records

1. *I/We\* have examined the accounts and records of .....(name and address of the assessee with PAN) engaged in the business of .....(nature of business) in order to arrive at the book profits during the year ended on the 31st March, .....*

[Paragraph 1]

11.1 The expression "accounts and records" appearing in the audit report should normally refer to those accounts and records which are to be examined for the purpose of arriving at the book profit for the relevant previous year. In this context "accounts and records", primarily, could mean profit and loss account, profit and loss account as laid before the annual general meeting of the company as per the provisions of section 210 of the Companies Act, 1956 and all supporting statements, records, books, etc. The examination of the accounts and records would depend on the facts and the circumstances of each case.

- 11.2 Since the report requires certification of the computation of book profit in accordance with section 115JB, the accountant has to examine the accounts and records of the company. The scope of verification shall be confined to matters necessary for verifying the components of book profit and for determination of the extent of adjustments called for. In conducting the examination and verification the accountant will have to use his professional skill and expertise and apply such tests as the circumstances of the case may require. The accountant will also have to keep in mind the concept of materiality depending on the circumstances of each case. He would be well advised to refer AASs as well as the guidance notes issued by Institute. The "Guidance Note on Audit Reports and Certificates for Special Purposes" deserves a special reference. The accountant would be well advised to so design the verification programme as would reveal the extent of examination and to ensure adequate documentation in support of the information being certified.
- 11.3 As section 115JB is applicable to companies only, in majority of cases the statutory audit under Companies Act, 1956 and/or the tax audit under section 44AB of the Act, would have been completed before the accountant is asked to give his report under this section. The accountant may rely on these audit reports to such extent and in such manner as provided in various AASs issued by ICAI from time to time. The AAS on Basic Principles Governing an audit [AAS 1] issued by ICAI mentions:
- "Where the auditor delegates work to assistants or uses work performed by other auditors and experts, he will continue to be responsible for forming and expressing his opinion on the financial information. However, he will be entitled to rely on the work performed by others, provided he exercises adequate skill and care and is not aware of any reason to believe that he should not have so relied" [emphasis added].

- 11.4 In a case when the accounts are not audited under the Companies Act, 1956 and the accountant is called upon to give his report, under section 115JB the accountant should proceed with caution. As per law there is no requirement of prior audit under the Companies Act, 1956 nor is it an extension of the said audit. In such cases he will himself have to conduct all such examination and review which he considers necessary and sufficient for issuing the report as per Form No.29B. As abundant precaution he should get the annual accounts of the company duly authenticated by the Board of Directors of the company. The scope of review and examination in such circumstances would be extended. Further, the accountant should disclose the fact that profit and loss account submitted for verification and examination is not audited either under the Act or the Companies Act, 1956.
- 11.5 It may be reminded here that mere filing the audit report under section 115JB(4) will not fulfill the requirement of filing tax audit report in appropriate cases. Returns in such cases, filed without tax audit report will be defective returns as per section 139(9) of the Act and will be subject to consequences mentioned therein.
- 11.6 In regard to the nature of business, the principal line of business should be stated. In the case of an assessee rendering services, the nature of services should be broadly stated. The information to be given about the nature of business in the report is similar to the information called for in the return of income "Part IV, information relevant to the business or profession" where an assessee is required to state the nature of business or profession. The accountant may verify this information from clause 8(a) of Form No.3CD (being the form of particulars prescribed for the purpose of tax audit under section 44AB of the Act) wherever applicable.
- 12. Computation of book profit and income-tax payable**
- 2.(a) *\*I/We certify that the book profit has been computed in accordance with the provisions of this section. The tax***

*payable under section 115 JB of the Income-tax Act in respect of the assessment year ..... is Rs....., which has been determined on the basis of the details in Annexure A to this Form.*

[Paragraph 2]

- 12.1 To certify the computation of book profit and that too in accordance with section 115JB, it will be necessary for the accountant to examine or verify that:
- (a) the profit and loss account is prepared in accordance with parts II and III of Schedule VI to the Companies Act, 1956;
  - (b) the profit and loss account so prepared follows the same accounting standards, accounting policies and method and rate of depreciation as followed in the profit and loss account as laid before the annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956;
  - (c) the book profit is computed after adjusting the applicable adjustments as prescribed in the definition of book profit [given by Explanation below the section].
- 12.2 Where the company follows an accounting year, which coincides with the previous year, the accountant will have the benefit of audited profit and loss account as laid before the annual general meeting. Even where the accounting year followed is different, a company may make available audited profit and loss account to the accountant. In that case, the accountant will have to examine any comments, observations or clarifications of the auditors relating to any non-compliance with parts II and III of Schedule VI to the Companies Act, 1956. However, in a case where such audited accounts are not available, as for example, when the statutory audit under the Companies Act has not been undertaken it may be necessary for the accountant to examine the compliance independently, having regard to the guidance provided in AASs. The accountant will have to

examine the compliance with the provisions of parts II and III of Schedule VI to the Companies Act, 1956, by following the normal verification procedure.

- 12.3 It may be noted that column 7 of Annexure - A requires a positive or negative assertion about the compliance with parts II and III. It does not further require that the non-compliance should be quantified. Accordingly, the non-compliance, if any, should be reported. However, the quantification thereof or any adjustment on that account, is not necessary.
- 12.4 The basic purpose of enactment of section 115JB is to check the practice of the zero tax companies and other companies showing substantial book profits but paying nil or nominal tax to the exchequer. Therefore, the section seeks to ensure that the accounting policies, accounting standards and method and rates of depreciation followed in the accounts from which book profit is computed, is the same as has been adopted in presenting the accounts before the shareholders in the annual general meeting.
- 12.5 The next requirement is affirmation about accounting standards, accounting policies and method and rate of depreciation. Column 8 of **Annexure - A**, apart from the positive or negative answer, requires the disclosure of the nature and extent of deviation in regard to the accounting standards, accounting policies and rate of depreciation. The accountant should compare the accounting standards, accounting policies, the method and rate of depreciation followed in the profit and loss account with the profit and loss account (AGM). If a difference is noted, the nature thereof should be brought out or disclosed and should also be quantified.
- 12.6 If there is any difference in the same then adjustments should be made to make them compatible. Such readjusted accounts should form the basis for computation of the book profit and tax payable thereon as per section 115JB. The company may be asked to make the adjustments in respect thereof. If the company adjusts the difference, the adjusted

book profit should form the basis for computation of book profit as per the section. If the company does not adjust the difference for certain reasons, the accountant should bring out the differences and non-adjustment along with the reasons, if thought fit.

- 12.7 In paragraph 2 the accountant is required to certify that the book profit and tax payable thereon have been computed in accordance with the provisions of section 115JB. If the accountant is satisfied about the correctness of the computation as contemplated under section 115JB then the certification may be done without any qualification. Otherwise the report may be suitably qualified. However, where any of the matter stated in the report is answered in the negative or with a qualification, the report shall state the reasons therefor. The accountant should state the qualification in the audit report making it comprehensive and self explanatory. In this regard the accountant should follow the "Statement on Qualifications in Auditors' Reports" issued by the Institute.
- 12.8 Further, the accountant's own examination and/or the reports of other auditors may reveal various deficiencies and qualifications in the accounts being examined for computation of book profit. They may pertain to various matters e.g. disclosures under the Companies Act, 1956 true and fair view of the financial statements, matters relating to accounting policies or accounting standards etc. The accountant should examine them thoroughly. He should keep in mind that the purpose of the certification under this section is ascertainment of book profit and not the computation of income for regular assessment. As per the scheme of the Act the starting point for this section is the net profit as per profit and loss account. Therefore, the qualifications/ deficiencies pertaining to the balance sheet may not have any relevance to the computation of book profit. Section 115JB is a self-contained code in itself for computation of book profit and tax payable thereon. Further, the reporting requirement as per paragraph 7 of

**Annexure A** of Form No.29B calls for a positive or negative assertion about the preparation of profit and loss account in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 and does not require quantification thereof. The requirement of the section is the preparation of the profit and loss account in accordance with Parts II and III Schedule VI to the Companies Act, 1956. However, the proviso stipulates that the accounting policies, accounting standards and depreciation should be on the same basis as were adopted in the accounts laid in the annual general meeting. So long as both the accounts i.e. the accounts laid before the annual general meeting and the accounts from which book profit is calculated are based on similar accounting policies, accounting standards and depreciation method and rates, the qualifications or deficiencies referred to above will not be of relevance for this section. Such qualifications may affect the computation of income under regular assessment and therefore should be suitably considered for that purpose by the assessee and Assessing Officer. However, no adjustment is required to be made for them while making the report on computation of book profits. It would be advisable for the accountant to suitably disclose these qualifications in his report.

- 12.9 Adjustments are vital and important for computation of book profit. There could be one or more possible views on the nature of treatment to be given to the adjustments required to be made in computation of book profit. As discussed above, the company would be entitled to take such view as it may deem fit. For the purpose, the company, in computation of book profit, may make the necessary disclosures. It would be necessary for the accountant to examine all such adjustments, whether required to be made or not, along with the disclosures made by the company as well as the basis thereof.
- 12.10 The amount of tax payable, determined and mentioned against item 14 of **Annexure A**, should be incorporated in

paragraph 2 of the report. If the income-tax payable on the total income as furnished against item No.6 of the **Annexure A** is not less than 7.5 per cent of the book profit computed and indicated against item No.13, "not applicable (N.A.)" requires to be mentioned both against item No.14 of Annexure A as well as in para 2 of the report.

13. **Certification regarding particulars in Annexure A**

3. *In my/our\* opinion and to the best of my/our\* knowledge and according to the explanations given to me/us\* the particulars given in Annexure A are true and correct.*

[Paragraph 3]

This paragraph requires the accountant to report about the correctness of the particulars mentioned in **Annexure A**. As mentioned above, the particulars should be obtained from the assessee duly authenticated, which should be verified. In case of any negative finding, the same should be disclosed having regard to the discussion in para 12.7 hereinabove made in accordance with the "Statement on Qualifications in Auditors' Report" and reasons thereof should be given. If the accountant differs with the view of the company, then both views may be given.

**Annexure A to the report**

14. **Columns 1 to 4**

1. *Name of the assessee*
2. *Particulars of address*
3. *Permanent Account Number*
4. *Assessment year*

The name, particulars of address and permanent account number as obtained from the company shall be mentioned against columns 1, 2 and 3 respectively in Annexure A.

The address to be mentioned should be the same as has been communicated by the company to the Income-tax Department for assessment purposes as on the date of the signing of *the* report.

If the company has not been allotted permanent account number as on the date of signing of the report, that fact should be indicated and the general index register number (GIR) if available can be given.

The assessment year relevant to the previous year for which the report is obtained under section 115JB should be mentioned against column 4.

15. **Column 5**

***Total income of the company under the Income-tax Act***

The amount of total income of the company under the Act as obtained from the assessee should be given. The amount should be the same as determined for being furnished in the return of income.

As already explained the statement of total income is to be prepared and authenticated by the company on which the accountant can place reliance. Further, the accountant should state clearly in the report as well as in Annexure A that the total income as given *therein* is as computed by the company.

16. **Column 6**

***Income-tax payable on total income***

The income-tax payable on the total income furnished against column 5 shall be mentioned against column 6. A question may arise whether *it would include* surcharge or not? It may be noted that section 115JB deals with only income tax payable. The term only "tax" and not "income tax" is defined under clause (43) of section 2 of the Act. As such, there is a difference between income tax and tax (may also be termed as "total tax") payable. The Finance Act

provides that the "income-tax" shall be increased by "surcharge", may be, implying that "income-tax" does not include surcharge. Besides, the income-tax payable is required to be compared with 7.5 per cent of book profit as per column 14. The said 7.5 per cent does not encompass levy of surcharge and therefore the income-tax on total income in column 6 should also not include surcharge for comparison.

It requires to be mentioned here that ultimately surcharge as applicable shall be added to the income-tax payable by the company as determined after the said comparison under column 14 of the Annexure. If a contrary view is taken to the effect that income-tax necessarily includes surcharge as decided by the Supreme Court in *CIT v. K. Srinivasan* (83 ITR 346) then surcharge should be added both for column 6 as well as for column 14 before comparison.

17. **Column 7**

***Whether Profit and Loss Account is prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956)*** Yes/No

The Companies Act, 1956 requires that every company shall prepare its profit and loss account in accordance with the provisions of parts II and III of Schedule VI to the Companies Act, 1956. The same requirement is reiterated in the section. The accountant should verify the same and report. As mentioned earlier, the accountant will have to examine this himself or if any other audit report to this effect is available he may use the same in such manner and to such extent as is laid down in AASs.

It may be mentioned here that the column 7 of Annexure A requires response from the accountant only in "Yes" and "No" form. In the case of a negative *answer*, the accountant should only state the non compliances and nature thereof. As discussed earlier, no adjustment for the same should be made while reporting on the computation of book profits.

18. Column 8

*Whether the Profit and Loss Account referred to in column 7 above has followed the same accounting policies, accounting standards for preparing the profit and loss account and the same method of rates for calculating depreciation as have been adopted for preparing accounts laid before the company at its annual general body meeting? If not, the extent and nature of variation be specified* Yes/No

- 18.1 The first proviso to sub-section (2) of section 115JB stipulates that while preparing the profit and loss account, the accounting policies, the accounting standards and method and rates of depreciation shall be the same as have been adopted for the preparation of the profit and loss account as laid before the annual general meeting of the company in accordance with the provisions of section 210 of the Companies Act, 1956.
- 18.2 Similar requirement is envisaged by the second proviso to the said sub-section where the financial year adopted under Companies Act, 1956 is different from the previous year under the Act for preparation of profit and loss account of the previous year. Accordingly, where the company has adopted or adopts the financial year which is different from the previous year under the Act, the accounting policies, accounting standards and method and rate of depreciation followed in determining the book profit shall correspond to that followed for such financial year or part of such financial year falling within the relevant previous year.
- 18.3 The variation regarding the accounting policies, accounting standards and method and rate of depreciation can arise in two cases. Firstly, when the accounting year of the company is different from the previous year under the Act and secondly, when the company having the same accounting year and previous year, prepares accounts for income-tax on different basis. It may be noted that the

reference to AS in the section are to the AS referred to in section 211(3C) of Companies Act, 1956 and not AS(IT).

18.4 The accountant should verify profit and loss account and profit and loss account as laid before the annual general meeting of the company in accordance with provisions of section 210 of the Companies Act, 1956 and report. He will have to examine this himself or if any other audit report is available he may use the same in such manner and to such extent as is laid down in AASs. Where the annual general meeting of the company has not been held till the completion of reporting under section 115JB, the accountant should obtain suitable management representation that the very accounts examined by him will be placed before the annual general meeting of the company. He should also suitably disclose the same in his report.

18.5 Column 8 of Annexure A requires a report from the accountant in "Yes" or "No" form. In case the answer is in the negative the accountant should mention the nature of the variation. The format further requires the accountant to specify the extent of the variation. Therefore the accountant should quantify the effect of any such variation.

**19. Columns 9 to 11**

- 9. *Net profit according to Profit and Loss Account referred to in (7) above* .....
- 10. *Amount of net profit as shown in Profit and Loss Account as increased by the amounts referred to in clauses (a) to (f) of Explanation of sub-section (2) of this section (file working separately, where required)* .....
- 11. *The amount as referred to in item 10 as reduced by the amounts referred to in clauses (i) to (vii) of Explanation of sub-section (2) of this section (file working separately, where required)* .....

- 19.1 Net profit according to profit and loss account (referred to in column 7), should be mentioned against column 9. The amount against column 9 should be verified with the profit and loss account.

Adjustments are required to be made to the net profit by increasing the same by the amounts referred to in clauses (a) to (f) of Explanation of sub-section (2) of section 115JB. If any adjustments are to be made, a separate working sheet should be enclosed with the Annexure A. The net result of such working should be mentioned against column 10, which should be verified by the accountant. To this figure, adjustments must be made by reducing the amounts referred to in clauses (i) to (vii) of Explanation of sub-section (2) of section 115JB and the figures mentioned against column 11 should be verified with that.

- 19.2 It may be noted that section 115JB is a self contained code. It permits only those adjustments specifically provided in the section itself. No other adjustments are permissible to be made.

- 19.3 Keeping in view the above, the accountant will have to;

- (a) examine the auditors' report and the audited profit and loss account and the profit and loss account (AGM) to ascertain whether any qualification is made;
- (b) examine whether such qualification amounts to non compliance with accepted accounting principles or AS;
- (c) examine, if it is inferred that the profit and loss account, to that extent, is not in compliance with parts II and III of Schedule VI to the Companies Act, 1956 thereof, the nature of non compliance and quantify the same;
- (d) ascertain, whether any adjustment is made by the assessee in computation of book profit;

- (e) ascertain, if no such adjustment is made,, whether it is appropriately disclosed in the computation of book profit.
- (f) disclose the same in the report. If not adjusted.

For the above purpose, the accountant may also examine the audit report issued under section 44AB of the Act as also the computation of income as per the normal provisions of the Act.

- 19.4 The computation of book profit and the adjustments to be made thereafter involves many contentious issues. A brief write-up on such issues is given in **Appendix XII**. The Board has issued several circulars in this regard. Such circulars have been included in **Appendices V to XI**.

The objective of giving these contentious issues is to inform the members about the existence of such issues. However, the accountants are advised to examine the contention of the company in respect of any issue using their professional skill and expertise and examine its appropriate disclosure. Where the company has relied on any judicial decision or circular or any other basis in support of its contention then the accountant may suitably disclose the same in his report.

**20. Columns 12 & 13**

- 12. *Book profit as computed according to Explanation given in sub-section (2)* .....
- 13. *7.5% of "book profit" as computed in 12 above* .....

The column No.12 provides that book profit as computed according to Explanation to sub-section (2) of section 115JB should be mentioned therein. The effect of the addition and reduction to net profit as per profit and loss account has already been given in column No.10 and 11 as discussed above. If the company has followed different accounting policies, accounting standards or method and rates of depreciation in profit and loss account from profit and loss

account as laid before the annual general meeting of the company in accordance with the provisions of section 210 of the Companies Act, 1956 then, as explained above, the requisite adjustments are required to be made. Therefore the amount mentioned in column No.11 should be further adjusted by the amount quantified in column No.8 for arriving at the final figure of the book profit which should be mentioned against column No.12. The accountant should verify the same accordingly.

21. Column 14

*In case income-tax payable by the company referred to at Sl.No.6 is less than seven and one-half per cent of its book profits shown in column 12, the amount of income-tax payable by the company would be 7.5% of column 12, ..... i.e. as per (13)".*

Where the amount of income-tax payable on total income indicated against column 6 is more than 7.5% furnished against column 13, "**not applicable (N.A.)**" should be filled in against column 14.

On the other hand, if income-tax payable on total income indicated against column 6 is less than 7.5% of book profit furnished against column 13, 7.5% of book profit as appearing in column 12 should be mentioned against column 14.

If surcharge is applicable for the relevant assessment year, then the amount mentioned against column 14 shall be increased by the surcharge. The accountant should verify the same accordingly.

22. An illustrative draft of the report is given in **Appendix XIII**. The draft is not exhaustive. It only seeks to explain or substantiate the mode and the manner in which the report may be prepared in compliance with the section as well as the various Statements and/or Guidance Notes issued by Institute. Further, some important decisions relevant for the purpose of computation of book profit are given in **Appendix XIV**.

(Refer to paragraph 2.1)

**\*115J Special provisions relating to certain companies**

(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company (other than a company engaged in the business of generation or distribution of electricity), the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 but before the 1st day of April, 1991 (hereafter in this section referred to as the relevant previous year); is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(1A) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).

Explanation - For the purpose of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (1A), as increased by -

- (a) the amount of income-tax paid or payable, and the provision therefor; or
- (b) the amounts carried to any reserves (other than the reserves specified in section 80HHD or sub-section (1) 33AC), by whatever name called; or
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- (d) the amount by way of provision for losses of subsidiary companies; or

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\*Inserted by the Finance Act, 1987 w.e.f. 1.4.1988. The section is not operative for assessment year 1991-92 and onwards

- (e) the amount or amounts of dividends paid or proposed; or
- (f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies; or
- (g) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (4) of that section; or
- (h) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the period specified in sub-section (4) of that section; or
- (ha) the amount deemed to be the profits under sub-section (3) of section 33AC;

if any amount referred to in clause (a) to (f) is debited or, as the case may be, the amount referred to in clauses (g) and (h) is not credited to the profit and loss account, and as reduced by,-

- (i) the amount withdrawn from reserves (other than the reserves specified in section 80HHD) or provisions, if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1988, shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation ; or

- (ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

- (iii) the amounts [as arrived at after increasing the net profit by the amounts referred to in clauses (a) to (f) and reducing the net profit by the amounts referred to in clauses (i) and (ii)] attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be ; or

(iv) the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (b) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J.

(Refer to paragraph 2.1)

**\*115JA Deemed income relation to certain companies**

(1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 (but before the 1st day of April, 2001) (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956);

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation - For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -

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\*Inserted by the Finance (No.2) Act, 1996, w.e.f. 1.4.1997.

(a) the amount of income-tax paid or payable, and the provision therefor ; or

(b) the amounts carried to any reserves by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividend paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by,-

(i) the amount withdrawn from any reserves or provisions, if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but before the 1st day of April, 2001 shall not be reduced from the book profits unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account; or \*

Explanation - For the purposes of this clause, the loss shall not include depreciation;

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\*The word 'or' should have been placed at the end of the Explanation to clause (iii) and not here.

(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in sub-section (4) and sub-section (5) of section 80-IB for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the profits and gains under sub-section (4) and sub-section (5) of section 80-IB; or

(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined in the Explanation to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section; or

(vii) the amount of profits of sick industrial company for the assesment year commencing from the assesment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses; or

Explanation: - For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of profits eligible for deduction under section 80HHC, computed under clause (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section and subject to the conditions specified in sub-sections (4) and (4A) of that section :

(ix) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of

sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

(Refer to paragraph 2.3)

**115JAA Tax credit in respect of tax paid on deemed income relating to certain companies**

(1) Where any amount of tax is paid under sub-section (1) of section 115JA by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-section (4) and sub-section (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(4) The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than section 115JA, or section 115JB, as the case may be.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of section 115JA for that assessment year or section 115JB, as the case may be for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of section 143, section 144, section 147, section 154, section 155, sub-section (4) of section 245D, section 250, section 254, section 260, section 262, section 263, section 264, the amount of tax payable under this Act is

reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.

Sections 115JA and 115JB - A comparative presentation

(Refer to paragraph 2.1)

For ease of comparison, the provisions of section 115JA are given on the left hand side and the corresponding provisions of section 115JB have been given on the right hand side.

<p><b>115JA Deemed income relation to certain companies</b></p> <p>(1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 (but before the 1st day of April, 2001) (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.</p>	<p><b>115JB. Special provision for payment of tax by certain companies</b></p> <p>(1). Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after 1st day of April, 2001, is less than seven and one-half per cent of its book profit, the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent of such book profit.</p>
<p>(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with</p>	<p>(2). Every assessee, being a company shall for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with</p>

<p>the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956);</p> <p>Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :</p> <p>Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.</p>	<p>the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):</p> <p>Provided that while preparing the annual accounts including profit and loss account,-</p> <ul style="list-style-type: none"> <li>(i) the accounting policies;</li> <li>(ii) the accounting standards followed for preparing such accounts including profit and loss account;</li> <li>(iii) the method and rates adopted for calculating the depreciation,</li> </ul> <p>shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):</p> <p>Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-</p> <ul style="list-style-type: none"> <li>(i) the accounting policies;</li> <li>(ii) the accounting standards adopted for preparing such accounts including profit and loss account;</li> <li>(iii) the method and rates adopted for calculating the depreciation,</li> </ul>
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	shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.
Explanation - For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -	Explanation. - For the purpose of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -
a) the amount of income-tax paid or payable, and the provision therefor ; or	(a) the amount of income-tax paid or payable, and the provision therefor; or
(b) the amounts carried to any reserves by whatever name called; or	(b) the amounts carried to any reserves, by whatever name called; or
(c) the amount or amounts set aside to provisions made for meeting liabilities other than ascertained liabilities; or	(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
(d) the amount by way of provision for losses of subsidiary companies; or	(d) the amount by way of provision for losses of subsidiary companies; or
(e) the amount or amounts of dividend paid or proposed; or	(e) the amount or amounts of dividends paid or proposed; or
(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;	(f) the amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply,

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account,	if any amount referred to in clauses (a) to (f) is debited to the profit and loss account,
and as reduced by,-	and as reduced by-
(i) the amount withdrawn from any reserves or provisions, if any such amount is credited to the profit and loss account:  Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but ending before the 1st day of April, 2001 shall not be reduced from the book profits unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or	(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account:  Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under the Explanation; or
(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or	(ii) the amount of income to which any of the provisions of section 10 or section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or
(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account; or  Explanation - For the purposes of	(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.  Explanation- For the purposes of

<p>this clause, the loss shall not include depreciation;</p>	<p>this clause, the loss shall not include depreciation; or</p>
<p>(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or</p>	
<p>(v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in sub-section (4) and sub-section (5) of section 80-IB for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the profits and gains under sub-section (4) and sub-section (5) of section 80-IB; or</p>	
<p>(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined in the Explanation to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section; or</p>	
<p>(vii) the amount of profits of sick industrial company for the assesment year commencing from the assesment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special</p>	<p>(vii) the amount of profits of sick industrial company for the assesment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies</p>

<p>Provisions) Act, 1985 (1 of 1986), and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses; or</p> <p>Explanation: - For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or</p>	<p>(Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.</p> <p>Explanation - For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).</p>
<p>(viii) the amount of profits eligible for deduction under section 80HHC, computed under clause (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section and subject to the conditions specified in sub-sections (4) and (4A) of that section :</p>	<p>(iv) the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or</p>
<p>(ix) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.</p>	<p>(v) the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or</p>
	<p>(vi) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section and subject to the conditions specified in that section; or</p>
<p>(3) Nothing contained in sub-section (1) shall affect the</p>	<p>(3) Nothing contained in sub-section (1) shall affect the</p>

<p>determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.</p>	<p>determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.</p>
	<p>(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.</p>
<p>(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.</p>	<p>(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section."</p>

Circular NO. 495 dated 22nd September, 1987

(Refer to paragraph 2.1 and 19.4)

**“New provisions to levy minimum tax on “book profit” of certain companies:**

36.1 It is an accepted cannon of taxation to levy tax on the basis of ability to pay. However, as a result of various tax concessions and incentives certain companies making huge profits and also declaring substantial dividends, have been managing their affairs in such a way as to avoid payment of income-tax.

36.2 Accordingly, as a measure of equity, section 115J has been introduced by the Finance Act. By virtue of the new provisions, in the case of a company whose total income as computed under the provisions of the Income-tax Act is less than 30 per cent of the book profit computed under the section, the total income chargeable to tax will be 30 per cent of the book profit as computed. For the purposes of section 115J, book profits will be the net profit as shown in the profit and loss account prepared in accordance with the provisions of Schedule VI to the Companies Act, 1956, after certain adjustments. The net profit as above will be increased by income-tax paid or payable or the provisions thereof, amount carried to any reserve, provision made for liabilities other than ascertained liabilities, provision for losses of subsidiary companies, etc., if the amounts are debited to the profit and loss account. Liabilities relating to expenditure which has been incurred or which has accrued in respect of expenses which are otherwise deductible in computing income will not be added back. The amount so arrived at is to be reduced by -

- (i) amounts withdrawn from reserves, if any such amount is credited to the profit and loss account;
- (ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; and
- (iii) the amount of any brought forward losses or unabsorbed depreciation whichever is less as computed under the provisions of

section 205(1)(b) of the Companies Act, 1956, for the purposes of declaration of dividends. Section 205 of the Companies Act requires every company desirous of declaring dividend to provide for depreciation for the relevant accounting year. Further, the company is required under section 205 to set off against the profit of the relevant accounting year, the depreciation debited to the profit and loss account of any earlier year(s) or loss whichever is less.

36.3 Section 115J, therefore, involves two processes. Firstly, an assessing authority has to determine the income of the company under the provisions of the Income-tax Act. Secondly, the book profit is to be worked out in accordance with the Explanation to section 115J(1) would be invoked if the income determined under the first process is less than 30 per cent of the book profit. The Explanation to sub-section (1) of section 115J gives the definition of the "book profit" by incorporating the requirement of section 205 of the Companies Act in the computation of the book profit. Brought forward losses or unabsorbed depreciation whichever is less would be reduced in arriving at the book profits. Sub-section (2), however, provides that the application of this provision would not affect the carry forward of unabsorbed depreciation, unabsorbed investment allowance, business losses to the extent not set off, and deduction under section 80J, to the extent not set off as computed under the Income-tax Act.

36.4. In the case of a tea company where income is derived from the sale of tea grown and manufactured by the seller, only 40 per cent of such income is liable to tax under rule 8 of the Income-tax Rules, 1962. 60 per cent of the income, which is disregarded for the purposes of taxation is considered to be agricultural income and is, therefore, exempt under the provisions of Chapter III. The net profit determined in accordance with Schedule VI to the Companies Act, 1956, has to be adjusted, *inter alia*, in accordance with clause (f) and sub-clause (ii) of the Explanation to section 115J(1). In the case of the tea companies, the book profit should be computed by making all the adjustments referred to in the Explanation. However, no adjustment in respect of clause (f) and sub-clause (ii) of the Explanation is to be made for the agricultural income earned by tea companies from tea business. 40 per cent of the adjusted amount arrived at in this manner will be the book profit of the tea company in accordance with rule 8 of the Income-tax Rules.

36.5 The following examples illustrate how the amended provisions relating to the new section will be applied:-

Book profits for the purpose of the Companies Act, 1956		Year 1984		Profit under the Income- tax Act
(1)	Rs.			(2)
Loss excluding Depreciation	3,00,000		Loss excluding depreciation	80,000
Depreciation	1,00,000		Depreciation	4,00,000
		<u>Year 1985</u>		
Profit before depreciation	5,00,000		Profit before depreciation	5,00,000
Less: Depreciation As per books	<u>2,00,000</u> 3,00,000		Less: Depreciation	<u>4,00,000</u> 1,00,000
Less: Deduction U/s 205(2) for the year 1984	1,00,000 ----- 2,00,000		Less: Business Loss for 1984	80,000  ----- 20,000
C.F. Business Loss 1984	3,00,000		Less: unabsorbed depreciation	20,000 ----- Nil
		<u>Year 1986</u>	C.F. unabsorbed Depreciation	3,80,000
Net loss as per books before depreciation	(-)10,00,000		Business loss	(-)10,00,000
Depreciation	2,00,000		Add: Depreciation as per Income-tax Rules(-)	4,00,000

Business loss  
to be carried forward (-)10,00,000  
Unabsorbed  
depreciation to be carried forward (-)2,00,000

		Year 1987		
Net profit	10,00,000	Profit before depreciation	10,00,000	
Book depreciation	2,00,000	Less: Depreciation as per Income-tax Rules	8,00,000	
			-----	
			2,00,000	
		Less: carried forward business loss for 1986 to the extent adjusted	2,00,000	
		Assessed income	-----	
			Nil	

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(1)

(2)  
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Application of section 115J

Profit before depreciation	10,00,000
Less: Book depreciation	2,00,000
	-----
	8,00,000
Less: Deduction u/s 205(2)	2,00,000
	-----
	6,00,000

Out of the amount whichever is less:

1984: Business loss	..	..	3,00,000
1986: Business loss	..	..	10,00,000
			-----
Total loss	..	..	13,00,000
1986: Depreciation			2,00,000
Assessable income 30% of Rs.6 lakhs, i.e., Rs.1.8 lakhs			
Amount to be carried forward as per sub-section (2) of section 115J			
1984: Unabsorbed depreciation			3,80,000
1986: Business loss			8,00,000
Unabsorbed depreciation			4,00,000

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36.6 These amendments will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years.

**Circular No.550 dated 1st January, 1990**

**(Refer to paragraph 19.4)**

**"AMENDMENT OF THE PROVISIONS RELATING TO LEVY OF MINIMUM TAX ON "BOOK PROFITS" OF CERTAIN COMPANIES**

24.1 Under the existing provisions, where the total income of a company is less than 30 per cent of its book profits, the income chargeable to tax is deemed to be 30 per cent of such book profits (section 115J). For the purposes of the aforesaid provision, "book profits" means the net profit as shown in the profit and loss account in the relevant previous year prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956, subject to certain adjustments which increase or decrease the book profits.,

24.2 A large number of companies interpreted the provisions to mean that in case they were following an accounting year (under the Companies Act, 1956), which is different from the previous year under the Income-tax Act (i.e., period ending on 31st March) then the provisions of section 115J do not apply to them. This interpretation was based on the understanding that section 115J does not make it mandatory for a company to prepare its profit and loss account on 31st March of any year in case it is following an accounting year which ends on a different date. As this was against the legislative intent, the Amending Act has made it mandatory for all companies to prepare their profit and loss account for the previous year ending 31st March to determine "book profits" for the purposes of this section even if it is having a different accounting year for the requirements under the Companies Act.

24.3 The amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years.

24.4 Further, under the existing provisions, certain adjustments are made to the net profit as shown in the profit and loss account. One such adjustment stipulates that the net profit is to be reduced by the amount

withdrawn from reserves or provisions, if any such amount is credited to the profit and loss account. Some companies have taken advantage of this provision by reducing their net profit by the amount withdrawn from the reserve created or provision made in the same year itself, though the reserve when created had not gone to increase the book profits. Such adjustments lead to unintended lowering of profits and consequently the quantum of tax payable gets reduced. By amending section 115J with a view to counteract such a tax avoidance device, it has been provided that the "book profits" will be allowed to be reduced by the amount withdrawn from reserves or provisions only in two situations, namely :-

(i) If the reserves have been created or provisions have been made in a previous year relevant to the assessment year commencing before 1st April, 1988 ; or

(ii) if the reserves have been created or provisions have been made in a previous year relevant to the assessment year commencing on or after 1st April, 1988, and have gone to increase the book profits in any year when the provisions of section 115J of the Income-tax Act were applicable.

24.5 This amendment will come into force with effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years (section 19 of the Finance Act, 1989)."

**Circular No. 554 dated 13th February, 1999**  
**Tax incentives to the Indian shipping companies**  
**(Refer to paragraph 19.4)**

9.1 With a view to provide tax incentives to the public companies engaged in the business of operation of ships for generation of resources internally to augment their fleet, a new section 33AC has been inserted in the Income-tax Act. This section provides for deduction in computing the income from business of any amount credited to a reserve account. This deduction is not to exceed the total income of such companies as computed before making any deduction under this section and Chapter VI-A of the Income-tax Act. In case the accumulated credits to the aforesaid reserve account exceed twice the amount of the paid-up capital of the company, the excess will be disregarded for the purpose of allowance of deduction under this provision. For the above purpose, the paid-up capital of the company shall exclude the amounts capitalised from reserves. The reserve so credited will have to be utilised for the purchase of a new ship for the assessee's own business within a period of eight years next following the previous year in which the reserve was created. If such reserve is not so utilised, it shall be deemed to be the income of the assessee in the year immediately following the period of eight years and charged to tax accordingly. Within the aforesaid period of eight years and before the acquisition of a new ship, the amount credited to the reserve account can be utilised for the business of the assessee, except for distribution of dividends or profits or for remittance outside India either as profits or for creation of any asset. In cases where the amount of reserve is utilised in violation of the aforesaid condition, it will be deemed to be the income of the assessee for the year in which the amount has been so misutilised. Further, if a new ship acquired out of the reserve account is sold or otherwise transferred by the assessee within the period of eight years from the end of the previous year in which it was so acquired, the amount utilised out of the reserve account for the acquisition

of the ship shall be deemed to be the income in the year in which the sale or the transfer takes place.

9.2 For the purposes of section 115J of the Income-tax Act, the book profits of a company are, *inter alia*, increased by amounts carried to any reserves by whatever name called, the only exception being the reserves created by hotels and tour operators under section 80HHD. Section 115J of the Income-tax Act has been amended to provide that reserve created by the shipping companies under section 33AC will also not go to increase the book profits. Section 115J has further been amended to provide that the amounts deemed to be income under section 33AC, as discussed in the preceding paragraph, will, however, go to increase the book profits of a shipping company”.

9.3 Under section 80CC of the Income-tax Act, a deduction of 50% of the cost of acquisition of shares forming part of the eligible issue of capital is allowed from the gross total income. The maximum deduction eligible under this section is Rs.10,000. Hitherto, the issue of equity shares by shipping companies did not qualify for deduction under section 80CC. Further, the deduction under this section was available on the acquisition of shares only if such shares formed part of the issue of capital made by a company for the first time. This section has now been amended to provide that the acquisition of equity shares whether forming part of the first issue or a further issue of a shipping company will also qualify for deduction under this section. The benefit of deduction on the amount of acquisition of the equity shares of shipping companies will, however, be subject to the other conditions prescribed in section 80CC.

9.4 The above amendments shall come into force with effect from 1st April, 1990 and will accordingly, apply to the assessment year 1990-91 and subsequent years.”

**Circular No. 559 dated 4th May, 1990**

**(Refer to paragraph 19.4)**

"EXCLUSION OF EXPORT PROFITS, PROFITS OF TOURISM RELATED INDUSTRY EARNED IN CONVERTIBLE FOREIGN EXCHANGE AND INCOME OF COMPANIES ENGAGED IN GENERATION OR DISTRIBUTION OF ELECTRIC POWER FROM THE PURVIEW OF SECTION 115J"

9.1 Section 80HHC of the Income-tax Act provides for a 100 per cent deduction in respect of export profits earned by the exporters or supporting manufacturers. Section 80HHC provides for a 100 per cent deduction in respect of profits of hotels, tour operators or travel agents derived from services provided to foreign tourists, the receipts in relation to which are received in convertible foreign exchange. Thus, these sections seek to encourage exports and tourism related industry for augmenting the foreign exchange resources of the country by providing 100 per cent tax deduction in respect of profits from such activities. However, section 115J of the Income-tax Act levies a minimum tax on "book profits" of a company. Under the old provisions of section 115J, it was provided that where the total income of the company in respect of any previous year, computed under this Act, was less than 30 per cent of its "book profits", the total income chargeable to tax for that previous year shall be taken as 30 per cent of such "book profit". Thus, 100 per cent exemption allowed to exporters and tourism related industry under the provisions of section 80HHC and 80HHD was restricted by the provisions of section 115J, under which they would have been obliged to pay tax at least on 30 per cent of their profits, which were otherwise fully exempt under sections 80HHC and 80HHD.

9.2 It was pointed out that the provisions of section 115J took away the 100 per cent exemption which was to be allowed in respect of export profits earned by the exporters and tourism related industry and thus watered down the encouragement which was to be provided to such foreign exchange earning activities. Since the intention was that 100 per

cent of such profit should be exempt, it was decided that the profits, which are exempt under sections 80HHC and 80HHD, should be excluded from the purview of section 115J. It was also decided that section 115J should not apply to companies engaged in the business of generation or distribution of electricity.

9.3 To achieve the objectives outlined in para 9.2 above, the Amending Act, 1989 has carried out the following amendments in section 115J: -

(i) Sub-section (1) of the section has been amended to provide that the provisions of the sub-section relating to the taxability of 30 per cent of the "book profits" of companies shall not apply in the case of a company engaged in the business of generation or distribution of electricity.

(ii) An Explanation in the section provides for the manner of computation of "book profits" for the purposes of the section. The Amending Act, 1989 has carried out the following amendments in the said Explanation: -

(a) A new clause (iii) has been inserted in the Explanation to provide that for the purposes of computation of "book profits", the net profit shall be reduced by the amount of net profits derived from the business of exports or from services provided to foreign tourists by approved hotels and tour operators or by travel agents, which are eligible for deduction under sections 80HHC and 80HHD. For this purpose the net profit to be excluded shall be computed in the same manner as provided for in sub-sections (3) and (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be.

Thus the profits exempt under section 80HHC and 80HHD have been excluded from the purview of section 115J.

(b) Two new clauses (g) and (h) have been inserted in the Explanation to provide that for the purposes of computation of "book profits", the net profit shall be increased by,-

(1) any amount withdrawn from the reserve account under section 80HHD that has been utilised for any purpose other than those referred to in sub-section (4) of that section, or

(2) any amount credited to the reserve account under section 80HHD to the extent that the amount has not been utilised within

the period specified in sub-section (4) of that section, if the said amounts have not been credited to the profit and loss account.

(c) Certain other consequential amendments have also been made in the said Explanation.

9.4 These amendments come into force with effect from 1.4.1989 and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent assessment years”.

**Circular No. 680 dated 21st February, 1994**  
**Effect of Clause (iii) of the Explanation under section 115J**  
**(Refer to paragraph 19.4)**

“Clause (iii) of the Explanation under section 115J, which was inserted by the Direct Tax Laws (Amendment) Act, 1989, with effect from assessment year 1989-90, provides for a deduction from the book profits attributable to a business, the profits from which are eligible for deduction under section 80HHC or 80HHD. It also provides that the amount of deduction shall be computed “in the manner specified” in sub-section (3) or (3A) of section 80HHC or sub-section 3 of section 80HHD. Certain doubts have been expressed as to whether the amount quantified under section 80HHC(e) or (3A) or section 80HHD(3) itself should be deducted under Explanation (iii) under section 115J or whether only the manner of computation specified in those sections should be followed to quantify the amount of deduction.

2. It may be noted that while deductions under sections 80HHC and 80HHD are related to the profits computed under the head “Profits and gains of business or profession” section 115J is concerned only with book profits. While explaining the scope of Explanation (iii) under section 115J, it was stated in para 9.2 of the Board’s Circular No.559 dated 4-5-1990 (see [1990] 184 ITR (St.) 91), that the intention behind introduction of the said Explanation was to ensure that the provisions of section 115J, which provided for a tax on the book-profits, did not take away the 100 per cent exemption which was to be allowed in respect of export profits and the profits from tourism-related industry. It was also stated therein that the intention was that 100 per cent of such profits should be exempt in such cases. In para 9.3(a) of the same circular, it was elaborated that for the purposes of the subject Explanation, the “net profit” to be excluded shall be computed in the same manner as provided for in section 80HHC(3) or (3A) or section 80HHD(3). Further, the Explanation (iii) under section 115J itself clearly lays down that the amount, as arrived at after adjusting the net profit as shown in the profit and loss account for the relevant

previous year by the adjustments referred to in clauses (a) to (f) and (i) and (ii) of the said Explanation, should be allowed as deduction, computing the deduction, however, in the manner specified under section 80HHC(3) or (3A) or 80HHD(3). It is, therefore, clear that it is only the manner of computation specified in section 80HHC(3) OR (3A) or 80HHD, and not the amounts themselves, that should be imported into Explanation (iii) under section 115J.

3. Accordingly, the deduction contemplated under Explanation (iii) to section 115J should be computed according to the following steps :-

- (i) it should be first decided whether the assessee carried on a business, the profits from which are eligible for deduction under section 80HHC or 80HHD ;
- (ii) if so, the net profit shown in the profit and loss account of the relevant previous year should be adjusted as per clauses (a) to (f) and (i) and (ii) of the said Explanation.
- (iii) if the business exclusively consists of the types of business which are eligible for deduction under section 80HHC/80HHD the whole of such amount arrived at as per (ii) above should be allowed as deduction ; and
- (iv) if not, the proportion of the export turnover to the total turnover of the business carried on by the assessee as required under section 80HHC(3)(b) or the proportion of the turnover in respect of the sales made to export house or trading house to the total turnover of the business carried on by the assessee as required under section 80HHC(3A)(b) or, as the case may be, the proportion of the receipts specified in section 80HHD(2) to the total receipts of the business carried on by the assessee should be determined and the said proposition should be applied to the amount arrived at (ii) above to determine the quantum of deduction under section 115J.

4. This may be brought to the notice of all the Assessing Officers working under your charge."

**Circular No. 762 dated 18th February, 1998**

**Minimum Alternative Tax on companies**

**(Refer to paragraph 19.4)**

46.1 In recent times, the number of zero-tax companies and companies paying marginal tax has grown. Studies have shown that in spite of the fact that companies have earned substantial book profits and have paid handsome dividends, no tax has been paid by them to the exchequer.

46.2 The Finance Act has inserted a new section 115JA of the Income-tax Act, so as to levy a minimum tax on companies who are having book profits and paying dividends but are not paying any taxes. The scheme envisages the payment of a minimum tax by deeming 30 per cent of the book profits computed under the Companies Act, as taxable income, in a case where the total income as computed under the provisions of the Income-tax Act, is less than 30 per cent of the book profit. Where the total income as computed under the normal provisions of the Income-tax Act, is more than 30 per cent of the book profits, tax shall be charged on the same.

46.3 The effective minimum alternate tax, at the existing rates of taxation works out to 12 per cent of the book profits.

46.4 Income arising from free trade zone (FTZ), export oriented undertakings (EOUs), charitable activities, investment by a venture capital company and other exempted incomes (section 10) are excluded from the purview of the alternate tax.

46.5 Since the alternate tax is applicable only where the normal total income computed is less than 30 per cent of the book profits, so long as the enterprises (other than FTZ units and EOUs) earning income from export profits do not have their components of export income higher than 70 per cent of the book profits, the provisions of section 115JA will not be attracted. In other words, the MAT will apply only to such cases where export profits forming part of book profits of an assessee exceed 70 per cent of the total profits.

46.6 Companies engaged in the business of generation and distribution of power and those enterprises engaged in developing, maintaining and operating infrastructure facilities under sub-section (4A) of section 80-IA are exempted from the levy of MAT, so that the incentive given to infrastructure development is not affected.

46.7 The amendment will take effect from 1st April, 1997 and will accordingly, apply in relation to the assessment year 1997-98 and subsequent assessment years."

**Circular No. 763 dated 18 February, 1998**

**Minimum alternative tax on companies**

**(Refer to paragraph 19.4)**

45.1 The minimum alternative tax (MAT) on companies was introduced by the Finance (No.2) Act, 1996, with effect from the 1st April, 1997. This was necessary due to a rise in the number of zero-tax companies in view of tax preferences granted in the form of exemptions, deductions and high rates of depreciation. The rate of minimum tax was kept at a modest figure by deeming 30 per cent of book profits as total income. This modest amount is likely to go down further with the downward revision of corporate tax rate to 35 per cent and abolition of surcharge.

45.2 The Act exempts the export profits that are eligible for deduction under section 80HHC or under section 80HHE from the purview of the minimum alternative tax.

45.3 This amendment will take effect from the 1st April, 1998, and will accordingly, apply in relation to the assessment year 1998-99 and subsequent years.

45.4 The Act also inserts a new section 115JAA to provide for a tax credit scheme by which the MAT paid can be carried forward for set-off against regular tax payable during the subsequent five-year period subject to certain conditions, as under : -

(1) When a company pays tax under MAT, the tax credit earned by it shall be an amount which is the difference between the amount payable under MAT and the regular tax. The regular tax in this case means the tax payable on the basis of normal computation of total income of the company.

(2) MAT credit will be allowed carry forward facility for a period of five assessment years immediately succeeding the assessment year in which MAT is paid. Unabsorbed MAT credit will be allowed to be accumulated subject to the five-year carry forward limit.

(3) In the assessment year when regular tax becomes payable, the difference between the regular tax and tax computed under MAT for that year will be set off against the MAT credit available.

(4) The credit allowed will not bear any interest.

45.5 The rationale for allowing credit in respect of taxes paid under MAT in the aforesaid manner is that a company should always pay a minimum tax. The above method will ensure that the company will always pay a minimum tax even while offsetting the MAT credit against the regular tax.

45.6 The amendment will take effect from the 1st April, 1997 and will, accordingly, apply in relation to the assessment year 1997-98 and subsequent years."

CONTENTIOUS ISSUES IN THE COMPUTATION OF THE BOOK  
PROFIT AND ADJUSTMENTS TO BE MADE UNDER  
EXPLANATION TO SECTION 115JB

(Refer to paragraph 19.4)

Additions:

1. *The amount of income-tax paid or payable, and the provision therefor*

Under this item, only income-tax paid or payable and the amount of provision made towards income-tax liability shall be added. Item such as wealth tax shall not be added as they are not to be treated as part of income-tax. Controversy may arise about the treatment of interest, penalty, dividend tax payable under Income-tax Act as regards adding them to book profit on the ground that they do not form part of income-tax as per the Act.

2. *The amount carried to any reserves, by whatever name called*

Attention is invited to Circular No.550 dated 1st January, 1990 vide Appendix V

3. *An amount or amounts set aside to provisions meant for meeting liabilities, other than ascertained liabilities*

The explanation to section 115JB requires adding back of the provision made in the books for meeting unascertained liabilities.

The word "**ascertain**" as per the Webster's II New Riverside University Dictionary means, "**to make certain**". Thus ascertained liability means a liability which is certain or known.

As per AS 4, Contingencies and events occurring after the balance sheet date, the term "contingency" is defined as,

"A condition or situation, the ultimate outcome of which, gain or loss will be known or determined only on the occurrence, or non occurrence of one or more uncertain future events."

It can therefore be said that ascertained liability is one, which is not a contingent liability. The chartered accountant may decide the items that fall under this clause on the above said lines. For better understanding, the treatment of certain specific items are explained as under:

*Provision for bad and doubtful debts, Provision for Diminution in the value of investments, provision against non-performing assets:*

Clause(c) to the explanation deals only with the amounts, which are set aside as provision(s) for meeting liabilities. Whereas, the above mentioned provisions are made in the books in compliance with the accounting principles and as mandated by other Statutes towards anticipated losses. As such, these items may not fall under this clause. This view is supported by the decision of the Calcutta Tribunal in the case of *Sutlej Cotton Mills Limited v. ACIT (45 ITD 22)*. However, Madras High Court has given a contrary view in *Beardsell Limited v. DCIT (244 ITR 256)*, in the context of erstwhile section 115J.

Therefore, the chartered accountant may exercise his professional judgement on the treatment of the above, while computing the book profits for the purpose of this section.

*Provision for leave encashment / gratuity:*

AS 15 requires an appropriate charge to be made in the profit and loss account for retirement benefits due to the employee on actuarial basis. The Supreme Court in *Bharat Earth Movers Limited (BEML) v. CIT (112 Taxman 61)* held that

*"if the liability has definitely arisen in the accounting year the deduction should be allowed even though the liability may have to be quantified and discharged in a future date. What should be certain is the incurring of the liability and it should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one."*

In view of the decision of the Apex Court, it may be said that the provision for meeting the above said liabilities are ascertained liabilities and do not fall under this clause.

4. ***The amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply.***

It is given in the Explanation that expenditure relating to any income to which section 10 or 10A or 10B or 11 or 12 of the Act applies, shall be added back to the net profit for the purpose of computation of book profit. The accountant shall ascertain the quantum of such expenditure debited to the profit and loss account by examining the manner in which the company earns such exempt income. It is significant to note that section 10C has not been included in both additions and deductions.

**Reductions:**

1. ***The amount withdrawn from any reserves or provisions if any such amount is credited to be profit and loss account.***

Where assets are revalued in the books and depreciation is claimed on the enhanced value of the asset with a corresponding withdrawal from the revaluation reserve account, the chartered accountant may keep in mind the following decisions of the Tribunal rendered in the context of erstwhile section 115J.

*SRF Limited v. ACIT- 47 ITD 504 (Del)* - Amount drawn from revaluation reserve has to be excluded from net profit for the computation of book profit under section 115J.

*Punjab Fibres Limited v. DCIT- 72 ITD 68 (Del)* - Depreciation provided on the revalued figures cannot be adjusted in determining the book profit.

*Vijay Spinning Mills Ltd v. DCIT - 73 ITD 344 (Hyd)* - Depreciation shall be considered only on the historical cost and not on the revalued cost for the purpose of determining the book profit.

2. ***The amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.***

The amount of brought forward loss or unabsorbed depreciation whichever is less as per the books of account shall be reduced from the net profit. It is also clarified by way of explanation to the said clause that the loss shall not include depreciation. It means that the depreciation and loss before depreciation are to be compared to determine the quantum of deduction under this clause.

For instance, in the case of a company, if the brought forward loss is Rs.50 lakhs which includes unabsorbed depreciation of Rs.45 lakhs, the amount that shall go to reduce the net profit is the brought forward loss of Rs.5 lakhs as it is less than the unabsorbed depreciation. Therefore, book profit shall be computed only by reducing Rs.5 lakhs.

A question may arise as to whether the loss or depreciation to be taken is cumulative over the years or on a year to year basis. As explained in the Circular No 495 dated 22/09/1987 issued by the Central Board of Direct Taxes (CBDT) in the context of erstwhile section 115J of the Act it may be said that the figure has to be taken as cumulative over the years. The same exercise has to be done each year. This view was also upheld by the Madhya Pradesh High Court in *CIT v. Shree Synthetics Limited (233 ITR 333)*.

There may be situation where a company has only one item i.e. either brought forward loss or unabsorbed depreciation. In such a case, a doubt may arise as to the quantum of deduction under this clause. To explain this, in the example given above, if the entire brought forward loss of Rs.50 lakhs represents unabsorbed depreciation only, the assessee is compelled to compare nil brought forward loss with unabsorbed depreciation of Rs.50 lakhs and no reduction shall be allowed in determination of book profit.

3. *The amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section.*
4. *The amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section.*

5. *The amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section and subject to the conditions specified in that section.*

While determining the book profit under section 115JB, the amount of profits eligible for deduction under section 80HHC or 80HHE or 80HHF computed under the relevant provisions of the said sections shall be considered. In arriving at the profit eligible under the above sections reference may be made to the Guidance Note on Audit under section 80HHB and 80HHC.

ILLUSTRATIVE DRAFT OF THE REPORT OF THE ACCOUNTANT  
UNDER SECTION 115JB

(Refer to paragraph 22)

FORM NO.29B

[See rule 40B]

Report under section 115JB of the Income-tax Act, 1961

For computing the book profit of the company

1. I/We\* have examined the accounts and records of *XYZ Ltd., 14, ABC Street, 400 001, AAA345LQ* (name and address of the assessee with PAN) engaged in the business of *Trading in PQR* (nature of business) in order to arrive at the book profits during the year ended on the 31<sup>st</sup> March, 2002.
- 2(a) Preparation of the Profit and loss account in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 ("the Parts") and particulars required to be furnished in Annexure A hereof are the responsibility of the company's management. Our responsibility is to certify that:
  - the book profit has been computed in accordance with the provisions of 115JB of the Income-tax Act, 1961;
  - the profit and loss account is so prepared and follows the same accounting standards, accounting policies and the method and rate of depreciation as have been adopted for preparation of the profit and loss account required to be laid before the Annual General Meeting of the Company; and
  - the particulars as given in Annexure A to this Report are true and correct,

based on our examination. An examination includes, examining on a test basis, evidence supporting the amounts and disclosures in the profit and loss account and Annexure A. We believe that

our examination provides a reasonable basis for our opinion.

We did not audit the said profit and loss accounts. The said profit and loss accounts have been audited by other auditors whose report(s) has (have) been furnished to us, and our opinion or certification of the particulars for computation of book profit insofar as it relates to the amounts considered, is based solely on the report of the other auditors.

- (b) The information/particulars given in Annexure A and computation of tax payable under section 115JB of the Income Tax Act, 1961 ("the Act") are as per the computation made by the company and the details and information compiled and furnished to us by the company, based on its books of account and profit and loss account as well as the understanding of and assumptions made by the company.
  - (c) We have broadly reviewed the basis of compiling details and information and we have test checked the books and the details / information compiled by the company. Otherwise, we have relied on the computation furnished to us based on satisfaction of the conditions and assumptions as determined/made by the company.
  - (d) Information given in Annexure-A should be read along with the notes/assumptions / views expressed therein and is subject to the information and notes given in the audited profit and loss account.
  - (e) The company has furnished computation of total income, as per the provisions of the Act, to be furnished by it along with its return of income for the assessment year *2002-03*. Considering the significant complexities involved in the computation of "total income" under the Act including computation of admissible or inadmissible deduction and allowances as per and under the provisions of the Act, the computation has been accepted by us, without any verification.
- 3.(a) Based on and / or subject to the above, \*I/We certify that the book profit has been computed in accordance with the provisions of this section. The tax payable under section 115JB of the Income-tax Act in respect of the Assessment Year *2002-03* is Rs.....

which has been determined on the basis of the details in Annexure A to this Form.

4. Based on and / or subject to the above, in my/our\* opinion and to the best of my/our\* knowledge and according to the explanations given to me/us\* the particulars given in Annexure A are true and correct.

Date.....

.....

Signed  
Accountant.

## ANNEXURE A

[See paragraph 2]

### Details relating to the computation of book profit for the purposes of Section 115JB of the Income-tax Act, 1961

1. Name of the assessee : XYZ Ltd.
2. Particulars of address : ABC street,  
Mumbai - 400001
3. Permanent Account Number : AAA345LQ
4. Assessment year : 2002-03
5. Total income of the company : Rs. \_\_\_\_\_ (As  
Under the Income-tax Act computed by the  
assessee).
6. Income-tax payable on total income : Rs. \_\_\_\_\_  
(excluding surcharge)
7. Whether profit and loss account is : Yes/~~No~~, (see Note 1)  
prepared in accordance with the except that profit on  
provisions of Parts I and II of sale of asset is  
Schedule VI to the Companies Act, credited to capital  
1956 (1 of 1956) reserve account
8. Whether the profit and loss account : Yes/~~No~~.  
referred to in column 7 above has  
followed the same accounting  
policies, accounting standards for  
preparing the profit and loss account  
and the same method of rates for  
calculating depreciation as have been  
adopted for preparing accounts laid  
before the company at its annual  
general body meeting? If not, the  
extent and nature of variation be  
specified.

- |     |   |                         |
|-----|---|-------------------------|
| 9.  | Net profit according to profit and loss account referred to in (7) above  | Rs.....                 |
| 10. | Amount of net profit as shown in profit and loss account as increased by the amounts referred to in clauses (a) to (f) of Explanation of sub-section (2) of this section (file working separately, where required)                                | Rs.....(See enclosure)  |
| 11. | The amount as referred to in item 10 as reduced by the amounts referred to in clause (i) to (vii) of Explanation of sub-section (2) of this section (file working separately, where required)   | Rs..... (See enclosure) |
| 12. | Book profit as computed according to Explanation given in sub-section (2)   | Rs.....                 |
| 13. | 7.5% of "book profit" as computed in 12 above.  | Rs. ....                |
| 14. | In case income-tax payable by the company referred to at Sl.No.6 is less than seven and one-half per cent of its book profits shown in column 12, the amount of income-tax payable by the company would be 7.5% of column 12, i.e., as per (13)". | Rs.....                 |

Enclosure

Net profit as per profit & loss account (here state whether it is after tax or before tax or after / before appropriations)	Rs.....	
	Rs.....	Rs.....
	Rs.....	
Add: Amounts required to be added by clauses (a) to (f) of Explanation below section 115JB(2):		
(a) Income-tax (see Note 2)	Rs.....	
(b) Amounts carried to any reserves	Rs.....	
(c) Amounts set aside as provisions for meeting unascertained liabilities (see Note 3)	Rs.....	
(d) Provisions for losses of subsidiaries	None	
(e) Dividends	Rs.....	
(f) Amount of expenditure relating to income exempt under sections 10/10A/10B/11	<u>None</u>	
		<u>Rs.....</u>
Less: Amounts required to be reduced by clauses (i) to (vii) of Explanation below section 115JB(2):		
(i) amount withdrawn from reserve / provision	None	
(ii) Amount of income exempt under sections 10/10A/10B/11	None	
(iii) Amount of loss brought forward or Unabsorbed depreciation, whichever is lower (see Note 4)	Rs.....	

(iv)	Profits eligible for deduction u/s 80HHC(3) (see Note 5)	Rs.....
(v)	Profits eligible for deduction u/s 80HHE(3)	None
(vi)	Profits eligible for deduction u/s 80HHF(3)	None
(vii)	Profits of sick industrial company	<u>None</u>
		<u>Rs.....</u>
	Book profit	Rs..... -----

**NOTES:**

1. Please refer to the decision of Bombay High Court in CIT Vs.Veekaylal Investment Co. Pvt. Ltd.249 ITR 597
2. Does not include provision for wealth tax and deferred tax liability
3. Provisions for warranty expenses is considered as a provision for ascertained liabilities in view of Court/Tribunal decisions.
4. The company does not own any asset. As per books, the loss brought forward amounted to Rs. .... The said loss is considered as deductible.
5. Taken as per report issued by other accountants under the said provision.

## APPENDIX - XIV

### IMPORTANT DECISIONS RELEVANT FOR THE PURPOSE OF COMPUTATION OF BOOK PROFIT UNDER SECTION 115JB

(Refer to paragraph 22)

CASE LAWS	DECISION
<p><b>SECTION 115J</b></p> <p>Sutlej Cotton Mills Ltd v. ACIT 45 ITD 22 (Cal.)</p>	<p>Where there is no allegation of fraud or misrepresentation but only a difference of opinion has to be questioned whether a particular amount should be properly shown in the profit and loss or in the balance sheet, the provisions of sec.115J do not empower the AO to disturb the profits as shown by the assessee.</p> <p><u>Capital gain</u>: Capital gain cannot form part of book profit for the reason that it affects the capital structure of the company and does not affect the working results.</p>
<p>Travancore Chemicals Manufacturing Co Ltd v. DCIT 46 ITD 203 Cochin</p>	<p>As prior period adjustment was necessary in terms of para 2(b) of Part II of the schedule VI and the Standard issued by the ICAI also defines prior period items as Material Charges or Credits which arise in the current year as a result of error, the prior period items have to be considered in arriving at the book profit.</p> <p>Refund of tax not credited to profit and loss account cannot be added to book</p>

	profit.
Bombay Tyres International Ltd v. DCIT 51 ITD 339 (Bom.)	So long as the change was <i>bona fide</i> as per the legal and accounting requirement, the arrears pertain to a provision of an ascertained and known liability and therefore did not constitute reserve.
National Rayon Corporation Ltd v. DCIT 51 ITD 61 (Bom.)	Provisions made for liability relating to earlier years which had accrued in the earlier year but not provided could be deducted in computing the profits for the purpose of section 115J.
SRF Limited v. ACIT 47 ITD 504 (Del.)	Amount drawn from revaluation reserve has to be excluded from the net profit for computation of book profit under section 115J.
PSI Data System Ltd v. DCIT 69 ITD 7 (Cochin)	Amount written off or retained by way of depreciation is included in the definition of provision and accordingly the excess amount provided in the earlier years would qualify for reduction under explanation I to section 115J(1A).
Shree Sajjan Mills Ltd v. CIT 156 ITR 585 SC	Provision made on actuarial valuation is an ascertained liability.
CIT v. Apollo Tyres Ltd And CIT v. Krishna Oil Extraction Ltd (MP) 237 ITR 706 (Ker.)	Arrears of depreciation not provided in the books in earlier years cannot be provided in the current year.
Modern Woollen Ltd v. DCIT 47 ITD 154 (Bom.)	Depreciation can be provided in books of account at rates higher than those specified in Schedule XIV to the Companies Act.

<p>CIT v. Singh Alloys &amp; Steel Ltd. (2002) 253 ITR 650 (Kolkata)</p>	<p>There is no substance in the argument that provisions of sub-section (2) are contrary to and do not prevail over sub-section (1) of section 115J. Under the scheme of section 115J no doubt or ambiguity is left under the scheme behind section 115J. Whatever the loss the assessee suffered on account of fixation of the deemed income the assessee is permitted to carry forward that loss and that loss can be set off against the income of subsequent year of years.</p>
<p>CIT v. Fab Exports (P) Ltd. (2002) 258 ITR 56 (Mad)</p>	<p>It cannot be said that the Parliament intended, when enacting section 115J(2) to allow to the assessee the benefit of carry forward of loss of depreciation to the extent it had not been allowed not to suffer tax by reason of the tax levied on book profits and allow it be carry over to future assessment years for being set off against the actual profits earned in such future years. To read into section 115J(2) what has been provided in the repealed section 80VVA(4) would amount to rewriting the section substantially. The introduction of the scheme of tax credit later, by enacting section 115JAA w.e.f. 1.4.1998, also cannot have any impact on the interpretation of section 115J(2).</p>
<p>Cochin Cadalas (P) Ltd. v. CIT (2002) 125 Taxman 47 (Ker)</p>	<p>The Assessing Authority cannot modify net profit as shown in the profit and loss account for the purpose of computation of book profit.</p>
<p>CIT v. Malayala Manorama</p>	<p>As per sub-section (1A) of section 115J</p>

Co. Ltd. (2002) 253 ITR (Ker)	ascertainment of depreciation has to be in terms of section 205 of Companies Act understood in the light of section 350 of that Act and Schedule XIV to that Act and not as per Income-tax Rules.
CIT v. Dynamic Orthopedics (P) Ltd. (2002) 257 ITR 446 (Ker)	Even in the case of a private company, while estimating book profits, depreciation has to be calculated as per Schedule VI of the Companies Act and not as per the provisions of the Income-tax Act.
Assistant CIT v. J.G. Vacuum Flasks (P) Ltd. (2002) 83 ITD 242 (Pune)	Provision for doubtful debt cannot be considered as provision for "meeting liability" within the meaning of clause (c) of Explanation to section 115J.
JCT Ltd. v. Dy. CIT (2002) 253 ITR 61 (Kolkata Tribu)	Net profit as shown in the accounts of the assessee after writing off arrears of depreciation of the earlier years could alone represent book profits of the assessee and it is not for the Assessing Officer to substitute his own figure in its place.
Dy. CIT v. Shreyans Inds. Ltd. (2002) 125 Taxman 316 (Chd.) (Mag)	For computing book profit under section 115J loss is to be arrived at after taking into account amount of unabsorbed depreciation.
ITO v. Patkal Mining and Engg. Co. (P) Ltd. (2002) 82 ITD 109 (Gau) (TM)	Sub-section (2) of section 115J enacts a saving provisions and in effect nullifies the effect of sub-section (1) and as such unabsorbed depreciation has to be quantified and carried forward under section 32(2) by treating section 115J as non-existent.
NCS Estates (P) Ltd. v. Dy.	Book profits under section 115JA are

CIT (2002) 125 Taxman 220 (Hyd) (Mag)	profits arrived by the company after adjustments in the profit and loss appropriation account.
<b>Section 115JA</b> CIT v. B & A Plantations and Industries Ltd. (2002) 257 ITR 694 (Guj).	Contingent liability of assessee payable to electricity board which was subsequently converted into confirmed liability could not be added back while computing book profits of assessee.