

### **Special provision for computing income by way of royalties, etc., in case of non-residents.**

**44DA.** (1) The income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by a non-resident (not being a company) or a foreign company with Government or the Indian concern after the 31st day of March, 2003, where such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be, shall be computed under the head “Profits and gains of business or profession” in accordance with the provisions of this Act :

**Provided** that no deduction shall be allowed,—

- (i) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or
- (ii) in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices :

**Provided further** that the provisions of section 44BB shall not apply in respect of the income referred to in this section.

(2) Every non-resident (not being a company) or a foreign company shall keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

*Explanation.*—For the purposes of this section,—

- (a) “fees for technical services” shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;
- (b) “royalty” shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;
- (c) “permanent establishment” shall have the same meaning as in clause (iia) of section 92F.